

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redresses Forum
Nagpur Zone, Nagpur**

Case No. CGRF(NZ)/106/2017

Applicant : The General Manager,
Bharat Sanchar Nigam Ltd.,
Kalmna Telephone Exchange,
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(D/F), NUC, MSEDCL, Nagpur

Applicant represented by : 1) Mrs. M.H. Shastri, Executive Engineer(B).
2) Shri A.V.Prabhune, Authorised Representative
3) Shri A.M.Deotale, SDE(E), BSNL, Nagpur.

Non-applicant represented by: 1) Shri N. Vairagade, Ex.Engineer, MSEDCL.
1) Shri Vijay Avasthi, Manager, SNDL, Nagpur.
2) Shri Dahasahastra, SNDL, Nagpur.

Quorum Present : 1) Shri Vishnu S. Bute,
Chairman.
2) Shri N.V.Bansod,
Member
3) Mrs. V.N.Parihar,
Member Secretary.

ORDER PASSED ON 02.04.2018

1) It is an admitted fact that applicant is the H.T. Commercial consumer of non applicant since date of connection 15-1-2002 having consumer No. 410019006480 with Contract Demand – 69 KVA and meter No is 055 – SPNo 1207. Applicant named “Bharat Sanchar Nigam Ltd.” is Govt. of India

Enterprises and was prompt in regular payments of Electricity Bill as & when received till October 2017 excluding the assessed bill for 'R' phase CT faulty period and no payment is due.

2) The grievance of Applicant is that non applicant issued the assessed bill for period 12-5-2016 to 16-9-17 for additional 76127 Units for faulty R phase CT of H. T. Meter for Rs.1159599.68 Ps. Illegally. Applicant further said, fault was detected on 16-9-2017 but bill for period 12-5-2016 to 09-10-2017(date of information to applicant) was assessed i.e. lapse on part of non applicant as same is regularly monitored through SNDL's CMR and if fault occurs with R phase CT of H.T.Meter should have been detected and replaced in the month of May 2016 as meter reading is done by Dy.Ex.Engr. of non applicant. Applicant put question mark on silence of non applicant from 12-5-2016 to 09-10-2017.

3) Applicant said, non applicant's contention is due to faulty "R" phase faulty CT meter has recorded less consumption units for period 12-5-2016 to 16-09-2017. Applicant stated that after analysis of data record of working telephone connections for each year since 2013, it is observed that telephone connections are reduced every year since 2013 and power consumption since 2013 is on record.

4) Applicant said after replacement of 'R' phase faulty CT" on 16-9-2017, power consumption units on higher side though Telephone connections are reduced. Applicant said it is a case of faulty/defective meter, in the event of defective meter reading, Non Applicant should have calculated arrears for 3 months from 16-6-2017, On the average metered consumption for 12 months

immediately preceding 3 months from 16-9-2017 as per Reg. 15.4.1.

5) Applicant prayed for relief of setting aside assessed bill of Rs.1159599.68 for period 12-5-2016 to 16-9-2017.

6) Applicant filed copy of data of Telephone Connections yearwise with Power Consumption for the year 2013,2014,2015,2016,2017 which is self explanatory. Applicant filed the copy of order dated 21-4-1016 of CGRF Pune Zone both M/s. Prema Plastic Allied Industries Pune v/s The E.E. MSEDCL Pune in Case No. 06/2016 and copy of order dated 3-3-2017 in Case No. 7-2017 of CGRF, Pune Zone between Kailash Parbat Hotel (I) Ltd. Pune v/s The S.E. MSEDCL, Pune.

7) Non applicant in reply submitted as under "The official visited applicant's premises on 17-6-2017. During the inspection, As per MRI report, the "R" phase CT was faulty and normal assessment bill for Rs.1159598.68 for period 12-5-2016 to 16-9-2017 for additional 76127 Units on account of faulty R phase CT was issued". Applicant does not agree with Assessment as it is case defective meter and assessment should be done for previous 3 months be 17-6-2017 to 16-9-2017 on account of 33% less recording by the meter due to failure of 'R' phase CT and Applicant prayed for revision of assessment.

8) Non applicant said 'R' phase CT was found faulty and the same was immediately replaced on the same day i.e. on 16-9-2017. Non applicant said as per MRI Data of the meter, it was observed that failure of R phase CT occurred on 12-5-2016, meter could not recorded 33.33% of total Consumption since 12-5-2016 till 16-9-2017 but meter has recorded only 66.66% of total consumption.

100% - consumption is 228380 kwh but meter recorded 152253 Units and raised assessment of balance i.e. 76127 Units amounting to 1159598.68 ps. In bill of Oct. 2017.

9) Non applicant denied assessment of faulty meter as per Reg.15.4.1 and said the provisions of The electricity Act 2003 i.e. Section 56(2) prevails over Regulations 15.4.1 as assessment is for less period than 24 months as per section 56(2) and relied on the order of Hon'ble CGRF, Bhandup. Non applicant further said Regulation 15.4.1 of MERC (ESC) Regulations 2005 cannot be applied in the present case. Non applicant denied revision of assessment as per IGRC order and requested to reject the applicants grievance. Non applicant filed copy of order dated 27-11-2015 of CGRF. Bhandup in Case No. 24/2015 between Shri Ramesh Balkrishna Dholepatil v/s The Ex.Engineer Pune and other order dated 26-9-2017 in Case No. 20/2017 – CGRF Pune beth Mr. Chandrakant K. Shetty v/s MSEDCL, Vashi.

10) We heard the arguments of both the parties and perused all the papers on record alongwith orders of CGRF, E.O. High Court Nagpur & Mumbai etc.

11) At the first instance it is necessary to note/clear that CGRF Bhandup or CGRF Pune etc. are parallel Forums with same powers to the CGRF Nagpur and there is no binding effect of the orders of other CGRF to us as per MERC (CGRF & EO) Regulations 2006 and it is binding on parties to the grievance. Hence no need to indulge in the interpretations/orders etc. in it regarding Reg. 15.4.1 or section 56(2) of The Elect. Act 2003 and cannot be a part of our consideration. Hence CGRF orders are of no use to both the parties before us.

12) Non applicant in reply at Page 2 by placing reliance on order of CGRF, Bhandup, & tried to divert the issue pertains to Reg. 15.4.1 to section 56(2) of the Electricity Act 2003 and dared to say that in case of dispute the provisions of section of The Electricity Act 2003 must prevail over Regulations and totally oversight the provisions of Reg. 15.4.1 and incorrectly tried to interpret section 56(2) to support his contention wrongly.

(A) Reg. 15.4 & 15.4.1 of MERC (ESC) Regulations 2005 relates to “Billing in the event of Defective Meters” and detail procedure is given which is subject to the provisions of Part XII and Part XIV of the Act. Once non applicant has admitted that ‘R’ phase CT was faulty and due to failure of ‘R’ phase CT, the meter could not recorded 33.33% of total consumption since the date of failure of CT i.e. 12-5-2016 till replacement of the faulty CT on 16-9-2017 and now non applicant cannot divert from Reg. 15.4.1 to section 56 (2).

(B) Section 56 is regarding Disconnection of supply in default of payment. Section 56(2) :- is in 3 parts. – Not withstanding anything contained in any other law for the time being in force,

(1) 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 due. Note - In this case sum becomes first due on 16-9-2017 & not recoverable.

(2) Unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. Note - Sum becomes 1st due on 16-9-2017 and not shown continuously from 12-5-2016, hence cannot presumed to be recoverable on 16-9-2017.

(3) And the licensee shall not cut off the supply of Electricity.

Note - Immediately on receipt of bill of Oct 2017, the amount of Rs.1159599.68 shown as arrears and dispute raised by applicant. Hence the action of non applicant to intimate threat of disconnection or Disconnection Notice dated 1611-2017 during pendency of grievance before IGRC which is intentional attempt of non applicant & its official just to pressurizes the applicant for disputed payment.

(C) It is note worthy to mention that due to conflicting Judgements of High Courts by different benches, on point of Section 56(2) of the Electricity Act 2003, in writ petition NO. 10764 of 2011 in the High Court of Judicature at Bombay, Civil Appellate Jurisdiction between "M.S.E.D.C.Ltd. v/s The Electricity Ombudsman, Mumbai etc, vide order dated 24-1-2012, (para 11 & 12) Hon'ble High Court has noted that **"I deem it fit that the issue will have to be referred to the larger bench of this court Consisting of atleast 3 Judges. Hence, I deem it necessary to request the Hon'ble Chief Justice to refer the following issues to the larger Bench consisting atleast 3 Judges.** The issues to be referred is as under. i.e. 3 questions regarding section 56(2).

The writ petition is pending before larger Bench of Bombay High Court. Hence non applicant cannot take the advantage wrongly with their ulterior motive to hide the negligence and lapses on their part than acting on literal and simple clear verdict of Reg. 56(2). Hence contention of non applicant as to section 56(2) deserves to be rejected and not of any relevance in the present case of defective meter.

13) Non applicant place reliance on the order of The E.O. Mumbai in Representation No 29 of 2014 – order dated 25-8-2014. M/s. Bafna Auto Cars (I) Pvt. Ltd. v/s MSEDCL.

The above order is pertaining B phase CT was working intermittent and on basis of data available on record, the E.O. accepted the submission of non applicant but at para 23 of the order, it is observed that “It has been held as above that the appellant has not made out a case under Regulation 15.4.1 of Supply Code regulations, which is very important observation.

The non applicant in their reply is totally silent on the submission of the applicant as well as on data of Telephone connections from 2013 to 2017 and its electricity consumption and totally failed to refute or deny the submission of applicant. Applicant has made out a specific case under Regulation 15.4.1 of supply Code Regulations.

The Member (CPO) raised the question on above marked observations in M/s. Bafna Cars case and how order of this E.O. is beneficial to you, on this non applicant’s representative Mr. Awasti has adopted silence and hence inference can be drawn that in the present facts of the case as well as Applicant made out of specific case under Reg. 15.4.1, the order relied by non applicant does not support their own contention. Hence assessment by non applicant does not stand to Judicial Scrutiny.

14) The points for consideration of the forum are.

(1) Whether the present grievance comes under the provisions of Reg. 15.4 & 15.4.1 of MERC (ESC) Reg. 2005 ? - Yes

(2) Whether applicant is entitle for relief of Revision of Assessment ? - Yes

Ans – (1 &2) - Non applicant marked line on order M/s. Bafana Auto Cars (P) Ltd. i.e. “The Respondent stated that as per Regulation No. 3.4 of supply code Regulations, the Dist. Licensee is authorized to recover charges for electricity supplied in accordance with the Tariff.

Firstly as per Section 55(1) i.e. use, etc., of meters of the Electricity Act 2003

- (1) No licensee shall supply electricity after the expiry of 2 years from the appointed date, except through installation of a **correct meter** in accordance with regulations to be made in this behalf.

Non applicant admitted repeatedly in reply that “R” phase CT was faulty means meter was not recording electricity consumption and it is not & it cannot be mandate of the Reg. 3.4 that D.L. is authorized to recover charges for electricity supplied through the faulty or defective meter or faulty CT but mandate is to recover charges through installation of correct meter. Hence submission of non applicant deserves to be rejected as MRI data is for internal audit of D. L. and consumer is no way concern behind the back of Applicant. Secondly non applicant has recovered charges of supply of Electricity as per 3.4 for correct portion of meter and for faulty or defective meter i.e. faulty CT is to be decided as per Reg. 15.4.1 after testing of meter which is mandate of Regulations & main issue cannot be deviated..

- (2) As per ESC. 2005 – “Meter” is defined in Reg. 2(1)(q) as under.

“Meter” means a set of integrating instruments used to measure, and or record and store, the amount of electrical energy supplied or the quantity of electrical energy contained in the supply in a given time,

which include whose current meter and metering equipment, such as current transformer, capacitor voltage transformer or potential or voltage transformer with necessary wiring and accessories and includes prepayment meters”.

14.4 - Testing and Maintenance of Meter.

14.4.1 - The distribution licensee shall be responsible for the periodic testing and maintenance of all consumer meters.

15.4.1 - Billing in the event of Defective Meters.

15.4.1 - Subject to the provisions of Part XII and Part XIV of the Act, in case of defective meter, the amount of the consumer’s bill shall be adjusted, for a maximum period of 3 months prior to the month in which the dispute has arisen, in accordance with the result of the test taken, subject to furnishing the test Report of the meter alongwith the Assessed bill.

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter stopped recording upto a maximum period of 3 months, based on the average metered consumption for 12 months immediately preceding the 3 months prior to the month in which the billing is contemplated.

Note – In the present case neither the meter is tested nor test report of meter alongwith access bill is sent to the consumer which is violation of the regulation on part of the non applicant.

3.2 of MERC (SOP) Regulations 2014 is as under.

3.2 - Any failure by the distribution licensee to achieve and maintain the standards of performance specified in these regulations shall render the D.L. liable to payment of compensation under the Elect. Act 2003, as specified in Appendix 'A', to an affected person claiming such compensation.

The word defect or Defective meter is not defined in Act or regulations.

As per Section 2(1)(0) of the consumer Protection Act – 1986, “Supply of electricity” is included in the definition of “Service” and hence considering section 3 of The C.P.A. 1986, we are importing definition of “defect” as per section 2(1)(f) – means any fault, imperfection or short coming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods. In MERC (CGRF & EO) Regulations 2006, “Grievance” is defined in Reg. 2.1(C) which is almost identical as well as comprehensive.

(A) - It is not the case of non applicant that periodic testing and maintenance of the meter is done. Which has resulted delay in detecting “R’phase CT as faulty” from 12-5-2016 to 16-9-2017 for which non applicant is solely responsible for the same and applicant is in no way concern, for lapses of non applicant.

(B) Applicant repeated alleged that the official visit at applicants premises on 16-9-2017 without intimation and detection of faulty ‘R’ CT was in absence of Applicants Officials as well as replacement of

'R' 'CT' and process of retrieval of the so called MRI data was also in their absence which is in total violation of Reg. 8.3 of MERC(ESC) Regulations 2005.

On perusal of papers on record, we did not have occasion to verify the inspection report which creates suspicion. Non applicant in reply said 'R' phase CT was found faulty and same was immediately replaced on the same day without intimating applicant which is deficiency in service on the part of non applicant & its official.

- (C) On perusal of definition of 'Meter' means a set of integrating instrument used to measure or and/or record the amount of energy supplied in a given time includes current transformer as integral part of meter also and same is proved as faulty. Hence it can be concluded that meter was faulty/defective and provisions of Reg. 15.4.1 well attracted including its provisio.

As per Regulaions 15.4.1, in case of a defective meter, the amount of the consumer's bill shall be adjusted for maximum period of 3 months prior to the month in which dispute has arisen in accordance with the results of the test taken subject to furnishing test report alongwith assessed bill and non applicant after detection on 16-09-2017 immediately replaced faulty C.T. and it was mendatory to sent test report alongwith assessed bill but they have sent only bill on 09-10-2017. But non applicant failed to test the faulty 'R' CT. as well as failed to mention serial No's of new CT installed which creates suspicion about entire working of non applicant behind back of applicant'.

(D) Applicant relied on the following orders of E.O. Nagpur and Judgements of the H.C. Nagpur and Forum also came across the Judgement of High Court Nagpur in case of this Forum.

(1) E.O. Nagpur in Representation No. 11/2011 order dated 8-12-2011 M/s. Bhosla Military School v/s E.E. MSEDCL, Nagpur.

(2) E.O. Nagpur Mure Memmorial Hospital v/s S.E., MSEDCL Sadar, Nagpur. Rep. No. 18/2012 order dated 12-4-2012.

(3) E.O. Nagpur Dev Kanoria, M/s. Sudarshan Motors v/s The .S.E. MSEDCL, Nagpur Rep. No. 140/2014 order dated 16-3-2015.

(4) E.O. Nagpur Rep. No. 65/2017 order dated 1-2-2018. Principal, LAD College for Women, Nagpur v/s The Executive Engineer, MSEDCL, Congressnagar, Nagpur.

(5) In the High Court Judicature at Bombay, Civil Appellate Jurisdiction W.P. No. 3614 of 2013. "MSEDCL vs Consumer Grievance Redressal Forum".

On perusal of orders of Electricity Ombudsman, Nagpur it is observed.

Order at Sr. 1 – Relates to No Voltage to 'Y' & 'B' phase, No current to B phase of meter.

Order at Sr. 2 - "B" phase CT was abnormal.

Order at Sr. 3 - "Y" phase CT Not recording.

Order at Sr. 4 - Failure of 'Y' phase CT.

E.O. in all the four representations, have consistently taken the view that above failures are relating to integral part of meters and

meters become defective and MERC (ESC) Regulations 15.4 & 15.4.1 is attracted and ordered in favour of consumers by setting aside orders of IGRC, CGRF and directed to revise the assessed bill for the period of 3 months of date of detection of failure and orders of E.O. were complied by same non applicant without any grudge and cannot take different stand for indential disputes now.

Order No. 5 – It was the case of wrong grouping & replacement of R group phase with “B group” and ‘R’ phase of the meter was not working properly.

District forum appointed a commission, to test the “R” phase CT, the meter was not running slow by 34% but the meter was running slow by 16.10% and fresh bill for 16.10% as per Reg. 15.4.1 was ordered to be issued and presumption of 34% slowness was quashed and W.P. of present Non applicant was dismissed. This Judgement of the High Court proves the importance of Testing of C.T. which is mandate of regulation which helped consumer by charging 16.10% against flat presumption of non applicant i.e. 34% slowness.

(6) We have come across the cases of this Forum dealt by High Court are also of almost importance. In the High Court of Judicature at Bombay, Nagpur Bench, Nagpur W.P. No. 1748 & 1866 of 2006 & Review Petition No. 2571,2572/2009 in W.P. No. 1748/2006 with W.P.No. 1806/2006.
Nodal Officer EE MIDC Division v/s M/s. Pooja Packwell (India) Ltd.

Nodal Officer EE MIDC Division v/s M/s. Radha Sarveshwar (P) Ltd.

In both cases of CGRF regarding – The consumption of electrical energy recorded by meters was abnormally high & the behavior of the meter was erratic & meter was declared defective and bill was revised by CGRF in both the cases and same was confirmed by High Court & dismissed the Writ Petitions of non applicant on 9-3-2007 as well as review petitions were dismissed 27-11-2009.

As per regulation 15.4.1 in case of defective meter, testing of the meter is basic requirement to have transparency in the working of non applicant but randomly, for failure of R phase CT 33.33% billing was charged without testing of the meter. If meter with 'R'CT would have tested the variation in slowness would have been detected, it would have transparently helped non applicant to recover charges for 3 months on average but total act of non applicant is suspicious, behind the back of applicant and also without correct application of mind.

It is necessary to observe that the reliance of non applicant on MRI data which is neither recognized by MERC (ESC) Reg. 2005 nor the Electricity Act, 2003 but it is for internal audit of D.L. Non Applicant has filed load survey of current i.e. one day before and after 16-9-2017 as well as instaneous values read on 27-7-2016 before 16-9-2017 and we are opinion it is of no relevance. Non applicant filed "VI profile data for 90 days i.e. 9-9-2017 to

23-10-2017 which for 45 days and not 90 days. The VI profile data or MRI data for period 12-5-2016 to 16-9-2017 was necessary for judicial scrutiny which was not provided and without complete data conclusion of non applicant are without any basis, but on random deserve to be not of any use.

As per para 10 of written notes of arguments of applicant,- it is pertinent to note that Hon. IGRC has passed order dated 17-11-2017 without giving an any opportunity of hearing to applicant. Hon. Supreme court had underlined following legal principles in various cases. The concept of Natural Justice is to prevent miscarriage of Justice and it entails.

- (i) No decision shall be given against a party without affording him a reasonable hearing.
- (ii) The quasi – Judicial enquiries should be held in good faith and not arbitrarily or unreasonably.

Comparative Chart Para 18 of arguments.

Month	No fault period Consumption.				
	Year 2015	Year 2016	% Variation	Year 2017	% Variation
June	10026	9207	-8.9	10903	8.0
July	11171	9911	-12.7	10911	-2.4
August	10756	9473	-13.5	10536	-2.1

On this argument, non applicant is absolutely silent means they are aware of true fact and accept.

On perusal of CPL for period May 2016 to August 2017 average consumption is 11376 and Jan. 2016 to Aug.2017 average consumption p.m. is 9773. For Nov. 2014 to Dec. 2015 average consumption p.m. is 10726 units.

Applicant since beginning agitated that their Telephone Connections including Broad Band declined and consumption also declined as per statistical Data for the year 2013 to 2017. Hence it is arbitrary decision on random basis to charge less consumption of 34% for 12-5-2016 to 16-9-2017 and against principles of law & Reg. 3.2 and 15.4.1 as a case of defective meter and connection also declined August 2013 to September 2017 from 3350 to 2235.

**Dissent Note by Member Secretary/Technical Member, CGRF, Nagpur
Mrs. Vandana Parihar dated 02-04-2018 in Case No. 106/2017.**

1. The General Manager Telecom, Kalmana Telephone exchange, Nagpur, bearing consumer no. 410019006480 utilizing electric supply for commercial purpose since 15.01.2002 received assessed bill from non-applicant, for the period from dt. 12-05-2016 to dt. 16-09-2017 amounting Rs. 11,59,598.68 for additional 76127 units on account of failure of "R" Phase CT, as such existing meter was recording less consumption. Hence applicant requested forum to issue assessed bill in the event of defective meter for previous three months preceding from dt. 16.06.2017 as per provision of clause 15.4.1 of MERC Supply code regulation 2005 based on the average metered consumption of 12 months.

2. As per detailed reply filed by Non-applicant, during routine inspection of HT consumer on dt.16.09.2017, "R" phase CT was found to be faulty, thereby meter was recording only 66.33% consumption instead of 100%. On verification of MRI data, failure of CT occurred on dt. 12.05.2016. Therefore assessed bill of additional units is raised to applicant since 12.05.2016 to 16.09.2017.
3. To justify their claim Non-applicant and I also rely on order of CGRF Bhandup in the case no.20/2017 dt.26.09.2017 in matter of Mr. Chandrakant K. Shetty Vs MSEDCL Vashi Division, wherein they have held that "missing of R and Y phase of CT, does not mean meter is faulty, hence clause 15.04.1 of Supply Code Regulation 2005 is not applicable for assessed bill. As such the Respondent is entitled for less recovery considering 33.33% less recording done by meter in case one phase is failed/gone faulty" Similary CGRF Pune in case no.24/2015 dt. 27.11.2015 in the matter of Shri Ramesh Balkrushna Dhole Patil vs The Executive Engineer, MSEDCL, Bundgarden Division, Pune hold the similar view while passing the order and further ordered to revise the assessed bill limited to two year since it becomes due as per subsection (2) of section 56 of EA2003 and sum recoverable from the consumer is justified for the period of two years prior to date of detection.
4. In the instant matter, the Non-applicant visited the applicant's installation on 16.09.2017. It was detected by them that R phase CT current recorded by meter is zero. Thereafter Non-applicant replaced the faulty CT on the same day. With the help of MRI Data, the exact

5. date of Failure of CT is ascertained as dt. 12.05.2016. Thereafter Non applicant assessed the consumption for the 16 months i.e. from 12.05.2016 to 16.09.2017. The said period is well within prescribed limit of 24 months as per clause 56(2) of EA 2003. In the instant matter, the non-applicant has also held that EA act prevails MERC Supply code regulation, as regulations are based on EA 2003. I also agree with this contention and therefore has to be consider by the Forum.
6. I also rely on judgment passed vide order dt. 25.08.2014 by Hon'ble Electricity Ombudman (Mumbai) in representation no.29 of 2014 in the matter of M/s. Bafna Auto Cars (I) Pvt. Ltd. Vs. MSEDCL that "The meter has recorded reading as seen from MRI. If MRI shows that consumer has consumed energy, consumer is liable to pay towards consumption and no undue benefit should go to any one. The meter thus cannot be said to be defective to attract Regulation 15.4.1 of Supply Code regulation.
7. Further, I rely on judgment given In case No. 16 of 2008, Hon'ble Forum at Pune, in the matter of M/s. Venco Research and Breeding Farms Ltd. –VS- MSEDCL Pune Rural Circle which states that, "In the light of Hon'ble High Court decision the amount of difference of the electricity charges for the period Feb.2002 to May 2007 became first due on 30-07-2007 and respondent is expected to recover it within two years. Therefore, the said period of 2 years from 30-07-2007 is yet to be over and therefore the recovery of the said amount is not barred by time.

“Further it is held, “Unless demand is made it does not fall due”. In this case the bill period needs no restriction to the period of three months as this is not a case of defective meter.

In light of above facts, it is submitted that, the supplementary bill of Rs.11,59,598.68 for the period from 12.05.2016 to 16-09-2017 which was issued on dt. 09.10.2017 in the instant case became first due on 09.10.2017. Therefore, the said period of 2 years from dt. 09.10.2017, is yet to be over and therefore the recovery of the said amount is not barred by time.

8. In this specific case neither the actual meter was defective nor was its seals tampered. There is no dispute about the correctness of meter i.e. Actual Meter recording the consumption was not faulty. But fault was in one of the three CTs, and this is allied equipment in the definition of Meter. Due to failure of “R”phase CT, there was voltage available but current to the meter in R phase was zero. This fact is clearly seen from MRI report. Units recorded by the meter are the product of multiplication of current and voltage. In this case, as current is zero, hence, the final value of this multiplication product will be zero. On perusal of CPL, it is also clearly revealed that in absence of that R phase CT there is sudden drop in consumption of the applicant for the m/o May 2016 from 11043 to 9207, wherein 11043 units is the consumption of April 2016. But this fact was not brought to the notice of MSEDCL by applicant. Instead, the applicant had enjoyed reduced bill for longer

period. Similarly on inspection of CPL it is seen that, there is increase in consumption by about 35% after replacement of CT which coincides with the fact that meter was recording less by 33% before replacement.

9. The instant case is exactly similar to the case in which judgement passed vide order dt. 27.11.2015 by Hon'ble Electricity Ombudman (Nagpur) in representation no.72/ of 2015 in the matter of M/s. Tower Vision India Pvt. Ltd. Vs. The S.E. MSEDCL, The V.C.SNDL, Nagpur wherein it is ordered in para no. 9 that "A perusal of MRI report (Cumulative Events Report) dt. 16.09.2015 shows that R phase voltage was missing from 16.04.2013 whereas current was available and that occurrence is not yet restored. Similarly load survey data of MRI made available by the respondents for the period from Jan2014 and Feb2014 shows that there is current available on R phase which shows that appellant has utilized R Phase regularly during the disputed period whereas R phase voltage was not available to the meter. Due to this, the meter was not recording consumption for R phase. This was also agreed by the appellant and it itself stated that the units recorded by the meter are the product of multiplication of current and voltage. In this case, voltage is zero, hence, the final value of this multiplication product will be zero. The reasoning given by IGRC for reducing the consumption from 44581 units to 24098 units and consequently the bill amount from Rs.2,82,454/- to Rs.1,47,650/- and confirmed by the forum is quite correct. I find no force in the representation. The same deserves to be dismissed".

10. In this regard, Applicant's representative relied on the judgement passed vide order dt. 16.03.2015 by Hon'ble Electricity Ombudman (Nagpur) in representation no. 140/ of 2014 in the matter of Dev Kanoria, Sudarshan Motors vs. The S.E. MSEDCL, The V.C. SNDL, Nagpur. Her it is to bring to the notice of forum a very pertinent fact that, In the instant matter the old meter was tested in laboratory and during testing meter was found to be slow by 30% in pulse and Dial test and Y phase potential was missing from the actual meter. Thus in the instant case the meter was faulty as "Y" phase of the actual meter was missing and not the Y phase CT or PT, hence meter was recording the less consumption. So Hon'ble ombudsman in para no.11 mentioned that "provision of Clause 15.4.1 of supply code regulation 2005 is a specific provision regarding billing in the event of Defective Meter and it is fully applicable in present case" it is ordered to revise assessed bill as per provisions of clause 15.4.1 of supply code. As the facts of the grievance application filed by applicant are totally different from this case, forum cannot rely on this judgment for giving order in the instant case.

11. In view of the above observations and analysis, assessment of 76127 units for the period of 52 months charged to the applicant due to less recording done by the meter is in order and hence is payable by the applicant.

12. Hence, applicant's grievance is liable to be rejected. And Non Applicant is liable to pay the assessed bill amounting Rs.11,59,598.68 for additional 76127 units.

Mrs. Vandana N. Parihar
Technical Member,CGRF

Comments on Dissent Note.

It is an undisputed fact that "R" phase CT was found to be faulty and less recording by meter i.e. 66.33% instead of 100% is imaginary in the absence of Testing of meter as per Regulation 15.4.1. Non applicant totally failed to state when the Regulation 15.4.1 can be applicable and why testing of faulty meter was not necessary.?

As to less consumption by 34%, reference is made in Page 13 order No. 5, the case of High Court is referred in which as per tested meter was found running 16.10 as against MSEDCL allegation of 34% consumption and writ petition of MSEDCL was dismissed confirming order of forum and proved the mandatory requirement of Testing and Non applicant intentionally avoided & failed to comment.

In para 3, reference is made to the order of CGRF Bhandup & Pune and same is already clarified in Para 11 & 12 on Page 4 & 5 concluding as not binding on CGRF, Nagpur.

In Para 4 reference is made to "Bafna Car's Case' but intentionally avoided to make comments on para 23 i.e. "It has been held as above that appellant has not made out case under Reg. 15.4.1 and in para 13 page 7 detailed answer is already noted as Applicant had made out case as per Reg. 15.4.1 as meter was defective.

In para 5, reliance is made on the H.O. decision in matter of M/s. Venco Research & Breeding Farms Ltd. v/s MSEDCL Pune. In the High Court of Judicature at Bombay Civil Appellate Jurisdiction order dated 10-7-2015 in writ petition No. 6783 of 2009 – MSEDCL v/s Venco Research & Breeding Farms. W.P. No. 10764 of 2011 – MSEDCL v/s The Electricity Ombudsman order dated 24-1-2012.

W.P. No. 498 of 2009 – MCGM v/s Bean Tower Condominium.

W.P. No. 1850 of 2013 – B.MES & T. Undertaking v/s M/s. Maker Tower E&P Premises Ctts, Ltd.

“As per the order passed by the 1st court on 27-3-2015,w.p. No. 495/2015 is also directed to be tagged along with these proceeding viz. WP Nos 498/2009,1850/2013,147/2014 and 1307/2015. The said matters, therefore are tagged along with the aforesaid present petition. S.O. 21-8-2015 at 3 P.M.”

In W.P. No. 6783 of 2009 in the High Court of Judicature at Bombay Civil Appellate Jurisdiction. In matter MSEDCL v/s Venco Research & Breeding Farms Pvt. Ltd. in order dated 9-7-2014, “Considering the directions of the Apex Court and especially para 7&9 thereof and considering the order dated 24-1-2012 passed by this court in W. P. No. 10764 of 2011, we direct the Registrar (Judicial I) to place this petition alongwith order of the Apex Court as well as W.P. No. 10764 of 2011 before the Hon’ble Chief Justice on the administrative side to enable the Hon’ble Chief Justice to pass on appropriate order.

It is cleared in para (c) of page 6 that matter of Section 56(2) is referred to larger bench and nothing has been left to refer 'Venco Research & Breeding Farms Ltd.

In para 7 of Note reference is made to Rep. No. 72/2015 in matter of M/s. Tower Vision India Pvt. Ltd. v/s SE, MSEDCL. On page 15 para 2 it is already commented by referring "Supreme Court" Judgement and order loses its crediantial in favour of non applicant as it is held impermissible without providing copy to applicant and arguments on factual position i.e. in the absence of "Testing of Meter", proper inspection & replacement of CT & Retrieval of Data behind the back of applicant and without arguments on above representation as well as opportunity to applicant.

In para 8 of note only reference is made to the order of E.O. Nagpur in case of 'Dev Kanoria, Sudarshan Morotors v/s The MSEDCL and admitted that old meter was tested in laboratory and slowness was detected and accepted that Reg. 15.4.1 was applied. In the main order and order of High Court mandatory requirement testing is considered. Note appears to be absolutely silent about the verdict/view and order of E.O. in case of 'M/s. Bhosla Military School, Mure Memborial Hospital, Principal LAD College for Women, decided on the basis of provisio of regulation 15.4.1 and Dev Knoria case is decided as per 15.4.1 and High Court W.P. No. 3614 of 2013 MSEDCL v/s CGRF order dated 4-7-2013 and inference can be withdrawn that orders are acceptable.

Hence, indirect acceptance of provision that “provision of clause 15.4.1 of supply code regulations 2005 is a specific provision regarding billing in the event of defective meter and it is fully applicable in present case”. In the present case, non applicant himself admitted that ‘R’ phase ‘CT’ was faulty and Reg. 15.4.1 with proviso is applicable as CT is the integral part of meter which is defective. So we are not agreeable to the dissent note and majority view prevails.

As per prayer, the applicant requested to revise the bill for period 17-6-2017 to 16-9-2017 as per Reg. 15.4.1 and hence their is no propriety to pretend the grievance on the point of testing of the meter than proceeding in the grievance after a period 6 ½ month.

In view of the above observations & order of E.O. and High Court and in identical facts of the case, we are of the firm opinion that the present grievance is a case of defective meter and MRI data is of no relevance and Regulation 15.4.1 with proviso are applicable. Hence assessed bill of Rs.1159599.68 ps for period 12-5-2016 to 16-9-2017 issued by non applicant is illegal as per The electricity Act 2003 & ESC 2005, needs to be quashed and non applicant is liable to revise the bill as per regulation 15.4.1 for period 16-6-2017 to 16-9-2017 without any interest & DPC etc. The order of IGRC is also needs to quash & set aside as it is without application of law and Regulations and ratio laid by E.O. High Court.

We have observed the order of E.O. Nagpur Rep. No. 72/2015 M/s. Tower Vision India Pvt. Ltd. v/s SE, MSEDCL, on 02-04-2018. Non applicant neither made reference of above order during arguments on 20-03-2018 nor provided copy of the same to the applicant such attitude of non applicant deserves to be condemned and no opportunity was available to the applicant either to argue or to file additional written notes of arguments. Hence it is of no help to the non applicant.

In view of the present situation Forum place reliance on ratio laid down by Supreme Court of India, published in AIR 2008 SC 863 – between – Government of Karnataka v/s Gowramma & others.

“Reliance on the decision without looking into the factual back ground of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving Judgement that constitutes a precedent. The only thing in a Judge’s decision binding a party is the principle upon which the case is decided and for this reason, it is ratio decidendi.

Further said, the enunciation of the reason or principle on which a question before a court has been decided is alone binding as precedent.

Courts should not place reliance on the decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

Observations of courts are neither to be read euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated.

In view of above ratio & non submission of Inspection Report of meter dated 16-9-2017 as well as MRI Data for period 12-5-2016 to 16-9-2017 without testing of meter as per ratio of High Court about and comparison of factual aspect, placing order of E.O. just on record is totally impermissible and cannot be considered in favour of non applicant.

Hence the following order by the majority.

ORDER

- 1) The assessed bill period 12-5-2016 to 16-9-2017 for faulty 'R' phase is quashed & set aside.
- 2) The order of IGRC is also quashed & set aside.
- 3) Non applicant is directed to issue fresh bill as per provision of Regulation 15.4.1 without interest & DPC etc.
- 4) The compliance of this order shall be done within 30 days from the date of this order.

Sd/-
N.V. Bansod
MEMBER

Sd/-
Mrs.V.N.Parihar
MEMBER SECRETARY

Sd/-
Vishnu S. Bute,
Chairman