

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No. 30/2018

Date of Grievance : 28.05.2018

Hearing Date : 10.07.2018

Date of Order : 28.08.2018

In the matter of defective meter and wrong bill

M/s. Flucon Equipments,

---- Complainant

Milkat No. 831, Gat No. 316/1,

Kasar Amboli, Tal. Mulshi,

Dist. Pune - 412111

(Consumer No.183230026693)

VS

The Executive Engineer,

M.S.E.D.C.L.

Mulshi Division

---- Respondent

Present during the hearing:-

A] - On behalf of CGRF, Pune Zone,Pune.

- 1) Shri. A.P.Bhavathankar, Chairman, CGRF,PZ,Pune
- 2) Mrs. B.S.Savant, Member Secretary, CGRF, PZ, Pune
- 3) Mr. Anil Joshi, Member, CGRF, PZ. Pune.

B] - On behalf of Appellant

- 1) Mr.M.B.Choudhari, AEE, Mul;shi Dn.
- 2) Mr.P.K.Phad, Dy.E.E.Mulshi S/Dn.
- 3) Mr.N.B.Rade, AEE, Ganeshkhind

C] - On behalf of Respondent

- 1) Mr.Ajit S.Mahadar, Consumer Representative
- 2) Mr.A.S.Nivasarkr, Flucon Equipments
- 3) Mr.H.S.Inamdar, Flucon Equipments.

**Consumer No.183230026693, Sanctioned Load - 107 HP, Contract Load -
89 KVA Date of connection - 10.01.2014, Meter No. 13015881.**

The present appeal is filed by the aggrieved consumer M/s. Flucon Equipments against the decision order of IGRC dt. 11th May, 2018 in case No. 46 of 2018-19. The brief facts of the case are as under.

2. The consumer has applied for industrial connection and accordingly got the same with effect from 10.01.2014. The consumer was getting the bills for energy consumption regularly with normal status as also with forward reading. The consumer has also paid all such bills due as and when. The consumer has also enclosed CPL data for the period from February, 2014 till March, 2017 along with his grievance filed with the Forum in Schedule 'A'. On perusal of the entries in CPL of the consumer, status of the meter has also been reported as "Normal" for the entire period for which CPL is on record.

3. In routine checking on **12.02.2018**, Flying Squad from Ganeshkhind Division of the Utility carried out spot inspection of the consumer's meter and equipment and found that 'B-Phase' CT was missing of the consumer's meter. Based on the spot inspection, the Flying squad has drawn the preliminary conclusion that the 'B-Phase' CT was missing since the date of connection - i.e. 10.01.2014. Though the Respondent Utility had drawn the conclusion that the "B-Phase" CT was missing from the date of connection after analyzing the data, the Utility had issued manually prepared provisional Bill to the consumer on **15.02.2018** for assessment of **1,40,788** units for **Rs.11,48,450.00** for the period from **28.11.2013** to **12.02.2018** only. A remark to that effect has also been recorded by the officials of the Utility on the said bill issued manually to the consumer stating that the 'B-Phase' CT current is missing since **28.11.2013** to **12.2018** (i.e. the date of spot inspection of the unit.) This submission by the Utility on the provisional bill issued to the consumer on **15.02.2018** is in contravention with its own submission to CGRF vide Letter No. **2758** dt. **20.06.2018** wherein the Utility had reported that the 'B-Phase' CT is missing from the meter of the consumer since date of connection - i.e. 10.01.2014 and that this conclusion has too been drawn by it after analyzing the data. In its submission to the Forum, vide its letter No.

2758 dt. 20th June, 2018, the Utility further submitted that the initial reading of the Meter No. 18015881 was 343 units & reading on 12.2.2018 was 281919 units.

4. Accordingly, the consumer filed its complaint before IGRC on **12th March, 2018** with distinctive number allotted to it as **IGRC/46 of 2018-19**. Accordingly, the IGRC issued summons to the aggrieved consumer as also the Respondent to remain present on **10.04.2018** for personal hearing before it.

5. In its submission and pleadings before the IGRC, the consumer pleaded that it had applied for industrial connection from **10.01.2014** and was accordingly getting the bills regularly, as also all the bills received were being paid by it regularly. It was only after the spot inspection by the Flying Squad on **12.02.2018**, the consumer understood from the squad that one phase B CT was not working properly and that this was the condition right from the beginning – i.e. date of connection on **10.01.2014**. The consumer pleaded for its innocence for the reported defect pointed out by the Flying spot in the meter on **12.02.2018** and, therefore, complained against the defective meter for exorbitant bill amounting to **RS.11,48,450/-** covering the period of 51 months from **28.11.2013 to 12.02.2018** issued to it on **15.02.2018**. The consumer further invited attention of IGRC to the guidelines issued by the MERC in case of defective meters, as stipulated in “**MERC (Electric Supply Code and Other Conditions of Supply) Regulations, 2005**”, **Regulation No. 14.4** dealing with “Testing and Maintenance of Meter” under which the responsibility for periodic testing and maintenance of all consumer meters rests with the Distribution Licensee. The provisions under **Regulation 14.4** further state that the consumer may require the Distribution Licensee to get the meter tested at such facility as may be approved by the Commission. The consumer has also further drawn attention of the IGRC to **Regulation No. 15.4** dealing with “**Billing in the Event of Defective Meters**”. Under **Regulation No. 15.4.1**, it is stated that in case of a defective meter, the amount of the consumer’s bill shall be adjusted, for a maximum period of three

months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill. The relevant provisions referred to by the consumer are quoted hereunder for ready reference of all the concerned, I quote –

“Regulation No. 14 – Meters: 14.4 – Testing and Maintenance of Meter:

14.4.1 - *The Distribution Licensee shall be responsible for the periodic meter testing and maintenance of all consumer meters.*

14.4.2 - *The consumer may, upon payment of such testing charges as may be approved by the Commission under Regulation 18, request the Distribution Licensee to test the accuracy of the meter.*

Provided *that the consumer may require the Distribution Licensee to get the meter tested as such facility as may be approved by the Commission.*

14.4.3 - *The Distribution Licensee shall provide a copy of the meter test report to the consumer within a period of two months from the date of request for testing of meter by the consumer.*

Regulation No. 15 – Billing –

15.4.1 - Billing in the Event of Defective Meters: *Subject to the provisions of Part XII and Part XIV of the Act, in the case of a defective meter, the amount of the consumer’s bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken, subject to furnishing the test report of the meter along with the assessed bill.*

Provided *that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. IN case of defective meter, the assessment shall be carried out as per Clause 15.4.1 above, and in case of tampering as per Section 126 or 135 of the Act, depending on the circumstances of each case.*

Provided *further that, in case the meter has stopped recording, the consumer will be bill for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.” Unquote*

6. Thus, it is crystal clear from the submission of the aggrieved consumer before IGRC that it has focused more on the provisions contained in **Regulation 14.4** and **15.4** prescribed by the MERC in its Regulations referred to hereinabove, primarily for the reasons of its innocence in the defects of the meter, if any, as pointed out by the Flying Squad in its visit to the unit of the consumer on **12.02.2018**, though claimed by the Flying Squad about the existence of such a defect since the date of connection to the consumer, with which observations, the Utility itself had contradicted in its submission before the CGRF, referred to subsequently hereafter. It may be worthy to observe here that the Flying Squad has carried out normal inspection of the metering unit on **12.02.2018** for testing and inspection purposes of meter at the premises of the consumer, as also consumption was a routine activity of the Utility. In view of this, no motives could be attributed to the intentions of the consumer for avoidance of and/or concealment of consumption being recorded by the meter installed its premises by the Utility. Under the given circumstances, the innocence claimed by the Consumer for such a defect as pointed out by the Flying Squad in its spot inspection needs to be believed as bonafide one.

7. In its submission before the IGRC, the Utility had pleaded that on **12.02.2018** Flying Squad from Ganeshkhind carried out 'on the spot site inspection' of the factory site of the consumer and found that B-Phase CT was missing since the date of connection (i.e. **10.01.2014**). In absence of any previous occasion/s referred to in its submission to the Forum by the Utility for any such spot inspections having been carried out by it at the premises of the consumer, it happens to be the first flying squad inspection at the factory site of the consumer during the period after four years of connection of the consumer in January, 2014. It may, also therefore, be construed that the Utility too had no information / knowledge and/or reports and / or issues about the indulgence of the consumer in malafide activities and/or inherent defect in the meter installed at the premises of the consumer, if any, so far as the issuing of periodical energy bills by the Utility over the said period and

payments thereof by the consumer under normal circumstances are concerned.

8. In its submission before the IGRC, the Utility has further stated that the initial reading of the Meter installed at the premises of the consumer (i.e. Meter No. 13015881, Male L&T) was 343 units and reading of the said meter at the time of inspection by Flying Squad on 12.02.2018 was 2,81,919 units. However, due to missing of B-Phase CT, the meter has reportedly recorded energy consumption by 1,40,788 units vis-à-vis KVA MD recorded is less. As a result, the Sub-Divisional Office, Mulshi Sub-Division of the Utility had issued provisional bill for unrecorded units of 1,40,788 units, as above, amounting to Rs.11,48,450.00. As per the conclusive submission by the Utility to the IGRC, the above units of electricity have been consumed by the consumer during the period from 10.01.2014 to 12.02.2018. As against this, the Utility has issued the provisional bill to the consumer for the period from 28.11.2013 to 12.02.2018, as is evident from the categorical remarks put by the Utility on its provisional bill for Rs.11,48,450.00. When examined on the backdrop of the submission by the Utility in its Flying Squad Report and its qualifying remarks on the provisional bill issued to the consumer on 15.02.2018, for the period 28.11.2013 to 12.2.2018 and thereafter the Utility claimed that the Meter had recorded less consumption of the units from 10.01.2014 i.e. from the date of connection and then provisional bill was issued to the consumer on 15.02.2018. Further, in absence of any submission by the Utility, it could not be ascertained as to whether the aggregate consumption of 1,40,787 units has been billed as per the month-wise stages and also as per the billing rates applicable to the consumer over the period from time to time. In its concluding submission before the IGRC, the Utility further states that the consumer has to pay the bill for the above units as he has used the electricity and that this is not faulty metering case, but case of Missing C.T. due to manufacturing defect or any other reason. Since through the provisional bill the Utility has raised the demand for exorbitant amount of Rs.11,48,450.00 spread over the period of fifty one (51) months, its

submission “for any other reason” can hardly be considered as satisfactory. It is for the reasons that if the Utility itself is not specific about the causes leading to issuance of provisional bill for 51 months – i.e. manufacturing defect since the beginning or any other specific reason, including defective meter as claimed by the consumer, and that too for such a huge amount to the consumer, the entire exercise could lead to misgiving in absence of specific causes leading to such a situation and the consumer can hardly be put to pecuniary obligations for uncertain conclusions of the Utility leading to such a situation, and that too after the passage of almost four years from the date of connection to the consumer.

9. In its order passed on 11.05.2018, the IGRC states as – “it is clear that B-Phase CT of the consumer’s installation is missing. Consumer has use the units but it was not recorded on the meter. It might be because of manufacturing defect from the date of connection. As the consumer has used the units, bill issued to the consumer is correct and has to pay the bill.”

10. Aggrieved by the order of the IGRC, the consumer filed its Appeal in **Schedule ‘A’** to this forum on 28.05.2018 together with relevant documents in support of his appeal. The said appeal has also been registered in the office of this Forum under distinctive number as “**Case No. 30 of 2018.**” Following registration of the appeal, the office of the CGRF issued notice to the Respondent Utility on the same date – i.e. **28.05.2018** – bearing number 144 and called upon the Respondent – the Executive Engineer, Mulshi Division, - to file reply to the grievance making point-wise submission, providing issue-wise comments on the grievance together with status reports and documents in support of its defense, on or before **12/06/2018**. In the same notice, the Respondent Utility was also directed to forward a copy of its reply to the complainant simultaneously. In its submission before this Forum, the consumer has reiterated what it has submitted before the IGRC. The Respondent Utility has also reiterated and made the identical submission to this Forum vide its letter **No. 2758 of 20.06.2018**. In the said

submission to the Forum, the Utility further states that - "From the inspection and verification report, it seems there might be possibility that the consumer or his representative might have loosen the B-Phase CT Terminal. Hence above units are consumed by the consumer and those are not recorded by the meter. Therefore, the consumer has to pay the above units bill as per the assessment done as he has used the electricity. This is not a faulty metering case but case of Missing CT due to manufacturing defects or whatever other reasons." This Forum has given an opportunity of personal hearing to both the contending parties on 10th July, 2018, which was attended to by the concerned as stated at the beginning of this order. In its personal submission, the authorities of the Respondent Utility submitted before the Forum for the first time that no terminal seals are provided to the meter and, therefore, there might be possibility that intentionally the consumer representative/s has / have loosen the B-Phase CT terminal. I have heard both the parties, perused the relevant papers / documents filed by the contending parties, i.e. order passed by IGRC, Flying Squad Report dt. **12.02.2018**, MRI data report dt. **12.08.2018**, Meter Testing Report dt. **26.07.2018** as also the submission of the aggrieved consumer. It is the case of the consumer that since the 'B'-Phase CT was missing from the meter, the consumer should be charged as per the provisions of the Regulation No. 15.4 of the Supply Code Regulations. Following rival contentions from both the parties, the following issues have arisen for my consideration -

a) Whether the Meter can be termed as "Defective" and the assessment of the bill by the Utility is in order?

b) Whether the contention of the Consumer for application of provisions of the Regulation No. 15.4 of the Supply Code are valid, legal and tenable under the grounds that the Meter was effective?

c) Whether the contention of the Respondent Utility to raise the bill for the period of 51 months - i.e. from 28.11.2013 to 12.02.2018 is valid, legal and

tenable as well when examined on the backdrop of the provisions of Section 56 (2) of the Electricity Act, 2003?

d) What order?

REASONING:

(1), (2) and (3) -

11. During the course of inspection by the Flying Squad to the premises of the consumer on 12.02.2018, it was observed that one of the three phases of the meter - i.e. 'B'-Phase CT was missing. In its initial assessment about the period from which the 'B'-Phase was missing, the Flying squad has considered it to be missing since the date of connection - i.e. 10.01.2014 and specific mention about the same has also been recorded in the report. However, after due examination of the data, the Utility had issued the revised bill to the consumer for the period of fifty one (51) months - i.e. from 28.11.2013 to 12.02.2018 for unrecorded consumption of 1,40,788 units with aggregate bill amount of Rs.11,48,450/-. In its report dt. 12.02.2018, the Utility has drawn the conclusions that since no terminal seals were provided to the meter, there might be possibility that intentionally the consumer representatives have loosen the B-Phase CT terminal or whatever other reason. Further, during the course of personal hearing, the officials of the Respondent Utility too admitted that LT-Industrial meters are not provided with terminal seals.

12. On examination of the various documents produced by the Utility, it is observed as under -

(a) The Testing Report dt.26.07.2018 in respect of the Meter by the Utility Company states that the meter was tested for load test and meter errors found within the permissible limits,

(b) MRI data Report dt. 12.02.2018 states that 'B'-Phase CT missing from the date of installation,

(c) MRI data has been retrieved from the meter and accordingly supplementary bill is issued to the consumer for 1/3 slowness of the meter due to B-Phase CT missing for the period of 51 months from November, 2013 to 12.2.2018.

(d) The documents and the data produced by the Respondent Utility has checked the meter installation of the Consumer and found that except the B-Phase CT terminal, rest of the two phases - 'Y' phase and 'R' phase found in order. The assessment by the Utility, is therefore, based on the data available.

(e) On this backdrop, there is no case for assessment of the supplementary bill issued to the consumer as per the provisions of Regulation 15.4 of the Supply Code Regulations.

(f) However, the Utility has to restrict its claim only for the period of 24 months / two years from the date of inspection of Flying Squad, Ganeshkhind, considering the provisions of Section 56(2) of the Electricity Act, 2003. The Utility is, therefore, required to reassess its claim for the period of two years, as against the present claim for 51 months.

Respondent Utility was directed to obtain the meter testing report at site (Consumer premises) and its report was submitted on 26.7.2018 and revised B-80 submitted on 1st Aug.2018 and hence the period of sixty days for disposal of the grievance could not be adhered to. Hence I am inclined to allow the consumer complaint and to proceed to pass following order:-

Date : 28th August, 2018

I agree/~~Disagree~~

Sd/-
Anil P.Joshi
Member
CGRF:PZ:PUNE

-
Sd/-
Anil Bhavthankar
Chairperson
CGRF:PZ:PUNE

Member Secretary, (B.S. Savant)

I have gone through the above reasoning and my opinion in this matter is differing as below:

The Licensee was inspected the site of consumer's premises & it is seen that B phase CT was missing and the MRI data was retrieved & the events occurred as zero current & hence the meter was not faulty/defective i.e. the meter recorded consumption of two CTs which in aggregate was 66.66% of total energy supplied to the consumer & thus the consumer was under billed 33.33%.

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 the propose recovery is correct amounting to Rs.11.48,450/- for the 140788 unbilled units for the period 10.01.2014 to 12.2.2018 & it shall be recoverable from the above mentioned consumers, as this is only clerical mistake due to oversight. The necessary installments for payment to the consumers shall be given as per MSEDCL Rules & Regulations without interest & DPC."

Sd/-

B.S.Savant

Member/Secretary

CGRF:PZ: PUNE

We have considered the dissent note of the Member-Secretary. The issue is at present under consideration before the Full Bench of Hon'ble High Court on which final order of Hon'ble High Court is awaited. Under these circumstances, the contention of the Member-Secretary does not hold good and, therefore, I am inclined to pass the following order.

Hence the order by majority

ORDER

1. Consumer complaint No. 30 of 2018 is partly allowed.
2. Respondent utility is directed to revise and reassess the bill for the period of two years with slab-wise benefit to the consumer i.e. from the date of inspection of Flying Squad Ganeshkhind - 12.2.2018.
3. Respondent utility shall not charge any interest, penalty, DPC, etc.
4. The Respondent Utility is directed to recover the arrears of bill for the period of past two years in six monthly installments along with the current bill of the consumer.
5. No further order to the cost.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 28th August - 2018.

Note:

- 1) If Consumer is not satisfied with the decision, he may file representative 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~~

Sd/-
ANIL JOSHI
MEMBER
CGRF:PZ:PUNE

Sd/-
A.P.BHAVTHANKAR
CHAIRPERSON
CGRF: PZ:PUNE