

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 112 OF 2024

In the matter of retrospective recovery towards under billing

Sneha Paradise Co-op. Society, Wing C.....Appellant
(Con. No. 170478698219)

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Kothrud (MSEDCL)... Respondent

Appearances:

Appellant : 1. Ramesh Jadhav, Chairman
2. Swapnil Joshi, Secretary
3. Harish Dharne, Member
4. Pramod Patil, Member

Respondent : 1. Sunil Gawli, Addl. Ex. Engineer
2. Shital Indalkar, AE, I/c Addl. Ex. Engineer

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 7th August 2024

Date of Order : 19th August 2024

ORDER

This Representation was filed on 3rd June 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 11th March 2024 in Case No. 44 of 2023 passed by the Consumer Grievance Redressal Forum, Pune (the Forum). The Forum partly allowed the grievance. The operative part of the order is as below: -

“2) The Respondent is directed to keep the bill of Rs.18,11,250/- aside.



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- 3) The Respondent is directed to issue the bill for 24 months with retrospective effect. DPC & Interest should be waived off.
- 4) The Respondent is directed to initiate the disciplinary action against the concerned for not monitoring the consumer billing properly leading for accumulation of bill and blockage and loss of revenue.”

2. The Appellant has filed this Representation against the order of the Forum. The e-hearing was held on 07.08.2024 through Video Conference. The parties were heard at length. The Respondent filed a reply on 16/07/2024. For easy understanding, the Respondent’s submissions and arguments are stated first as below. [The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ in brackets where needed.]

- (i) The Appellant is a cooperative housing society and a LT Residential Consumer (No. 170478698219) from 20/05/2013 for the common purpose of the Society (water pump, lift, common lighting etc.) [Note: The Appellant has one building comprising of 59 flats.]
- (ii) The details of electric connection, sanctioned load, retrospective recovery towards R phase CT secondary missing, etc. are tabulated as below:

Table 1:

Name of Consumer	Consumer No.	Address	San.Load & Con. Demand	Date of Supply	Purpose	Irregularities observed in MRI Report	Supple. Bill & Period	Revised Supple. Bill & Period as per Forum's order
Sneha Paradise Co-op. Society, Wing C	170478698219	Wing C, S.No. 131/132, Warje Malwadi	35 KW/ 39 KVA	20/05/2013	Residential (Common purpose of the Society)	R Phase CT secondary missing from 20/05/2013 to 30/09/2022	Rs.18,11,250/- for the period from June 2013 to Sep 2022 (112 months)	Rs. 4,74,360/- for the period from Oct.2020 to Sep 2022 (24 months)

- (iii) Earlier there was manual photo reading of the CT operated meter (No. 3449652 of 3X 100/5 CT operated meter of HPL make and plugging type of CT of Hupen make having ratio 3x100/5 A) and the consumer was billed under common Processing Cycle (PC) 7. Under this system, the under – recording of consumption due to one phase missing could not be easily detected. Later, from Oct. 2022 onwards, it was decided that consumers having sanctioned load of more than 20 KW should be treated as important revenue generating consumers, hence it was decided to bill

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such consumers in PC “0”. It was made mandatory to take readings of these consumers by MRI (Meter Reading Instrument)/ AMR (Automatic Meter Reading) as a policy of the corporate office dated 30/09/2022.

- (iv) Accordingly, the data of the meter was retrieved from the meter and was analysed in MDAS (Meter Data Acquisition System), in which CT current missing events were recorded since 20/05/2013 i.e. from the date of connection. On the analysis of MDAS data, **it was seen that the meter was under recording consumption for the period from 20/05/2013 to 30/09/2022. This meter was plugging type CT meter. The stud of CT secondary was found broken of R phase plugging type CT. The Y & B phase CT secondary studs were found in order.** The Appellant was informed accordingly that an assessment for 1/3rd under recording of meter would be sent in due course. The Appellant was billed with adjustment of 1/3rd units for the months of Oct. and Nov. 2022 (issued in Nov. & Dec. 2022) for Rs. 26153/- and Rs. 33193/- respectively.
- (v) An inspection was again carried out in the presence of the Appellant on 20/12/2022. During inspection, the current was observed as below:

Table 2:

Description	R Phase Current (A)	Y Phase Current (A)	B Phase Current (A)
Current on Tong Tester	5.70	5.80	5.20
Current on Meter	0	5.80	5.20

The meter was replaced by a new meter (Sr. No. X -1147050 of 40-200 A Secure make) on the same day i.e., 20/12/2022, normalcy was restored, and all currents were now showing on the display of the meter.

- (vi) The old meter (No. 3449652 of 3X 100/5 CT operated meter of HPL make) was sent for testing on 27/12/2022. The said meter was tested on 02/01/2023 and the Test results of the meter found it in order. The Plugging type of 100/5 A CT (Sr. No.

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120877 of Hupen make was tested for Ratio Test of 100/5 A. The Test Results are as below:

1. *The R Phase CT Secondary was found broken, hence, it was not possible to carry out CT Ratio test for R phase.*
2. *The CT Ratio Test for Y and B phase found in order.*
3. *The PT continuity for R, Y B phase found in order.*

- (vii) The Respondent issued a supplementary bill of plain recovery of Rs. 18,11,250/- for 1,19,347 units on 03/02/2023 towards under-recording of consumption by 1/3rd consumption for the period from June 2013 to Sep 2022 (112 months). This is based on the data retrieved from MRI.
- (viii) The Appellant filed a grievance application with the Forum on 26/06/2023. The Forum by its order dated 11/03/2024 has partly allowed the grievance application by restricting the recovery to 24 months.
- (ix) As per the Forum's order, the Respondent sent a revised supplementary bill of Rs.4,74,360/- for 26791 units by a special messenger towards under-recording of 1/3rd consumption for the period from Oct.2020 to Sep 2022 (24 months). However, the Society refused to accept the same. This is not expected from a registered co-operative housing society.
- (x) The Appellant claimed that this case comes under Regulation 16.4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 which is reproduced below: -

"Billing in the Event of Defective/ stuck/stopped/burnt Meters,

16.4.1. Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective stuck/stopped/burnt 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

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accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill."

The above regulation is applicable in case of defective/ stuck/stopped/burnt meters. But in this case, the Appellant claims that the meter itself was found in order, but was recording less energy consumption due to the meter not getting R phase Current, due to broken CT secondary stud. This is a technical phenomenon as such the meter was not defective. Data retrieval of the meter by MRI is a universally accepted technology for analysing the working of the meter to see the data history and tamper events. It has also been accepted by various judicial pronouncements. Hence the MRI data retrieved is correct, and as per regulations, the bill for non-recorded units was issued to the consumer.

- (xi) The Respondent cited the Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017, and contended that the Judgment is squarely applicable in the instant case.
- (xii) The Respondent cited the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in the case of M/s. Prem Cottex V/s. Uttar Haryana Bijli. This is a case of escaped billing as the consumer has consumed energy which is recoverable for such under recording. Therefore, full recovery on account of missing current of R phase of RYB terminology at the meter terminal is justified.
- (xiii) The Consumption pattern of the Appellant has been analysed on sample basis for Financial Year (FY) 2021- 22 (when R phase current was not extended to the meter and found zero to meter display) and compared with the consumption pattern of FY 2023-24 [after restoring normalcy of meter in Dec. 2022 (FY 2022-23)] as below:

Table 3:


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Sr. No.	Period	Total Cons. (units)	Avg. Monthly Cons. (units)	Remarks
1	2021-22	23971	1998	R phase missing and Y & B phase working correctly to the meter
2	2023-24	48734	4061	R, Y & B phases working correctly to the meter

From the above table, it is clearly established that earlier the recorded consumption was under billed.

- (xiv) The Respondent is deciding to challenge the order of the Forum in Bombay High Court, and the formalities are under process.
- (xv) In the circumstances, the Respondent prays that the representation of the Appellant be rejected, and to direct them to pay the supplementary bill of Rs. 18,11,250 /- towards under-recording of consumption by 1/3rd for the period from June 2013 to Sep 2022 (112 months).

3. The Appellant's submissions and arguments are stated as below:

- (i) The details of the electric connection are tabulated in Table 1. The supply of this connection was used for common purpose of the Society. The Appellant is regular in payment of bills.
- (ii) The Appellant was billed with additional adjustment bills in Nov. & Dec. 2022 for Rs. 26,153/- and Rs. 33,193/- respectively, which were paid under protest.
- (iii) The Appellant was billed for a supplementary bill of Rs. 18,11,250/- for 1,19,347 units on 03/02/2023 for the period from June 2013 to Sep 2022 (112 months) as per the MRI Report. The said supplementary bill is not acceptable to the Society.
- (iv) As per the Testing Report dated 02/03/2023 of the Respondent, the Plugging type of 100/5 A CT was defective. The CTs are an integral part of a meter as per the definition of a meter under Regulation 2.1(q) of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees,

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Period for Giving Supply and Determination of Compensation) Regulations, 2005 (Supply Code Regulations 2005) which is reproduced below:

“Meter” means a set of integrating instruments used to measure and/or record and store the information regarding amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time, which includes whole current meter and metering equipment, such as current transformer, capacitor voltage transformer or potential or voltage transformer with necessary wiring and accessories including for communication and also includes pre-payment meters, Special Energy Meters, Net Meters, etc.”

The above provisions make it clear that the necessary wiring and accessories like terminals, screws, studs, etc., are a part and parcel of a meter. Therefore, missing of R Phase CT secondary to meter is to be treated as the meter being defective. Hence, the Respondent rightly replaced the defective meter on 20/12/2022. The Assessment for 112 months (from June 2013 to Sep 2022) of Rs.18,11,250/- is totally wrong. **The Appellant should be assessed only for three months as per Regulations 16.4.1 of MERC Supply Code & SOP Regulations 2021.**

- (v) The Appellant filed a grievance application with the Forum on 26/06/2023 which allowed 2 years' recovery. The Forum failed to understand that the meter was defective. The revised supplementary bill of Rs.4,74,360/- for 26791 units as per the Forum's order is wrong as the meter was defective.
- (vi) The Appellant referred to the Orders of the Forum in Case of 56/2021 and 57/2021 where the retrospective bills were quashed. The Appellant also referred to orders of the Electricity Ombudsman (Mumbai) in Case No. 100 of 2010 dated 17.08.2010 and 117 of 2022 dated 7.10.2022 in support of its claim.
- (vii) The energy meter belongs to the electricity distribution company and the responsibility of maintaining it lies solely with it. As per MERC Supply Code & SOP Regulations 2021, 'Periodic Testing of Meters' is the responsibility of the

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Respondent. The Respondent failed to test the meter for 112 months and hence the Appellant is not responsible for the same.


(viii) The Appellant prays that the Respondent be directed:

- i. to quash the supplementary bill of Rs. 4,74,360/- for 26791 units for 24 months and to bill the Appellant for three months instead of 24 months considering the meter as defective.
- ii. to refund the disputed amount which was paid under protest.
- iii. to waive of interest and delayed payment charges levied if any.
- iv. to compensate Rs. 50, 000/- towards mental torture and expenditure towards filing the grievance.

Analysis and Ruling:

4. Heard the parties and perused the documents on record. The Appellant is a cooperative housing society and has a LT Residential connection (No. 170478698219) from 20/05/2013 for the common purpose of the Society (water pump, lift, common lighting etc.) The details of the electric connection, sanctioned load, retrospective recovery towards R phase CT secondary missing, etc. are tabulated in Table 1.

5. The Respondent contended that earlier the photo reading of the CT operated meter was done manually under common Processing Cycle (PC) 7. Those consumers having sanctioned load more than 20 KW, even if residential, were decided to be treated as important revenue-oriented consumers. Hence, the Appellant was shifted to PC "0 and it was made mandatory to take its reading by MRI/ AMR as per the new policy of the corporate office dated 30/09/2022. Accordingly, the data of the meter was retrieved and was analysed in MDAS (Meter Data Acquisition System), in which CT current of R phase was found missing from 20/05/2013 i.e. from the date of connection. On the basis of this analysis of MDAS data, the Respondent issued a supplementary bill of plain recovery of Rs. 18,11,250/- for 1,19,347 units on 03/02/2023



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towards under-recording of consumption by 1/3rd for the period from June 2013 to Sep 2022 (112 months).

6. The Appellant contended that he should be billed only for three months, as CT of the meter was defective and CTs are an integral part of a meter. Thus, this case comes under Regulation 16.4.1 (Billing in the Event of Defective/ stuck/stopped/burnt Meters) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021.

7. The Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is squarely applicable in the instant case. The relevant part of the Judgment is reproduced below:

“33 it is therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. As under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R, Y & B phases. I am, therefore, of the view that such a wrong attachment of wiring by the electrician would not amount to a defect in the meter. Consequentially, due to the under recording of the meter, the Appellant has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under recording.

34. Clause 3.4.4 of the Regulations, 2005 enables the Petitioner to recover the charges for the electricity actually supplied, which would include a fixed charge as per the prescribed rates. The Appellant, therefore, has to pay full charges for the electricity actually consumed.

35. In the Municipal Corporation case (supra), this court has sustained the supplementary bill raised by the Electricity Company and this Court has upheld the recovery of the amount mentioned in the supplementary bill.”

This Judgment is applicable in the instant case. As such the meter was not defective; however, R Phase Current was not extended to the meter from the date of connection i.e. 20/05/2013 onwards. The meter was finally replaced on 20/12/2024 in the interest of the Respondent.

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8. The Forum by its order has considered under-recording by 33 % for the period of 24 months, which fulfils the statutory requirement of Section 56(2) of the Act in case of deficiency in service. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

“(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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. The Court has allowed 24 months’ recovery retrospectively in cases of mistake or oversight.

The Hon’ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. ”

In the instant case, the Respondent initially issued a supplementary bill of Rs. 18,11,250/- for 1,19,347 units on 03/02/2023 for the period from June 2013 to Sep 2022 (112 months) as

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per MRI Report towards R phase current missing. However, the Respondent is entitled for retrospective recovery, considering under billing of 33 %, only for a period of 24 months i.e., from Oct. 2020 to Sep. 2022.

9. Accordingly, the Forum has given a reasoned and speaking order. Hence, there is no need for interference in its order principally. The recovery of 24 months is upheld. The Forum's order is modified as below. The Respondent is directed: -

- i. to withdraw the interest and delayed payment charges if levied from 03/02/2023 onwards till the date of this order.
- ii. The Appellant may be granted six equal monthly instalments without DPC and interest, to pay the revised bill. If the Appellants fails to pay the monthly installment along with its current bill, the Respondent is permitted to recover the interest proportionally for the failure part and to take action as per the law in force.
- iii. Compliance to be submitted within two months from the date of issue of this order.
- iv. Other prayers of the Appellant are rejected.

10. The representation of the Appellant is disposed of accordingly.

11. The secretariat of this office is directed to refund the amount of Rs.25,000/- taken as deposit to the Respondent to adjust in the Appellant's ensuing bill.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary

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