

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 91 OF 2024

In the matter of retrospective recovery towards under billing

Abhilasha Sandip Khandelwal..... Appellant
(Con. No. 170140448969)

V/s.

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

Appearances:

Appellant : 1. Sandip Khandelwal
2. Santosh Garud, Representative

Respondent : 1. Atul Deokar, Executive Engineer, Bhosari Dn.
2. Somnath Mane, Addl. Executive Engineer

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 13th August 2024

Date of Order : 19th August 2024

ORDER

This Representation was filed on 15th May 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 26th Feb. 2024 in Case No. 38 of 2023 passed by the Consumer Grievance Redressal Forum, Pune (the Forum). The Forum partly allowed the grievance. The Forum's order being in Marathi, its operative part is translated as below: -



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- “2) The Respondent is directed to set aside the supplementary bill of Rs. 17,24,370/-.
 3) The Respondent is directed to issue the bill for 24 months with retrospective effect from the date of inspection i.e. 10/03/2023 without any interest and delayed payment charges.
 4) The Respondent is directed to initiate the disciplinary action against the concerned for not monitoring the consumer billing properly leading for blockage and loss of revenue.”

2. The Appellant has filed this Representation against the order of the Forum. An e-hearing was held on 13/08/2024 through Video Conference. The parties were heard at length. The Respondent filed a reply on 26/06/2024. 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 an Industrial Consumer (No. 170140448969) from 30/04/2011, and runs a unit for laser cutting, CNC bending and fabrication.
 (ii) The details of the electric connection, sanctioned load, retrospective recovery towards Y & B phase voltages, etc. are tabulated as below:

Table 1:

Name of Consumer	Consumer No.	Address	Sanc.Load / Cont. Demand	Date of Supply	Purpose	Date of Inspection	Irregularities observed in MRI Report	Supple. Bill & Period	Revised Suppl. Bill & Period as per Forum’s order
Abhilasha Sandip Khandelwal	170140448969	Plot 67, Sector 7, PCMTDA, MIDC, Bhosari	100 HP / 83 KVA	30/04/2011	Industrial	10-03-2023	Y & B Phase PT missing from 02/03/2023 to 10/03/2023 & 17/08/2020 to 10/03/2023 respectively.	Rs.17,24,370/- for the period from 17/08/2020 to 10/03/2023	Rs. 13,65,740/- in July 2024 for the period from April 2021 to March 2023 (24 months),

- (iii) The existing meter of the consumer is of Genus Make (No. 5811201) having Type- 3ph 4W, 40-200 Amp Capacity.
 (iv) The Asst. Engineer of the Respondent visited the premises of the Appellant on 10/03/2023 to carry out a routine inspection when it was observed that “Y & B Phase Voltages” were missing on the meter display. The display of the meter was as below:

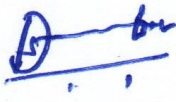


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Table 2:

Description	R Phase		Y Phase		B Phase	
	Current (A)	Voltage (V)	Current (A)	Voltage (V)	Current (A)	Voltage (V)
Display on Meter	49	256	48	0	35	0

- (v) The voltages of Y & B Phase were not extended due to loosened screw of Potential Terminals (PT) from the tapping point of the cable. Accordingly, the data of the meter was retrieved. The tapping screws of the meter were subsequently tightened, and it was confirmed that R, Y, & B Voltages were restored to the meter. All current & Voltage parameters were now showing on the display of the meter.
- (vi) **The data of the meter was analysed in MDAS (Meter Data Acquisition System) in which PT Voltage missing events were recorded, and it showed that Y & B Phase PT was missing from 02/03/2023 to 10/03/2023 & 17/08/2020 to 10/03/2023 respectively.**
- (vii) The Respondent issued a supplementary bill of plain recovery of Rs.17,24,370/- for 1,91,419 units vide letter dated 06/04/2023 towards the above under-recording of consumption. This is based on the data retrieved from MRI as tabulated in Table 2.
- (viii) The Appellant filed a grievance application with the Forum on 16/06/2023. The Forum by its order dated 26/02//2024 partly allowed the grievance application by restricting the recovery to 24 months. As per the Forum's order, the Respondent revised its supplementary bill from Rs.17,24,370/- to Rs. 13,65,740/- towards under-recording of consumption for the period from April 2021 to March 2023 (24 months) and the bill revision effect was given in the monthly bill of July 2024.



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

The Appellant claimed in the hearing that the present meter is a direct current meter, and tapping of the secondary currents and Voltages are an integrated part of the meter. However, this is not so. This meter is a special type of meter, and is a modified version of the CT operated meter. After tightening the voltage screws where it was tapped, normalcy was restored from 10/03/2023. The same meter is working satisfactory at present.

- (x) The above regulation is applicable in cases of defective/ stuck/stopped/burnt meters. But in this case, the meter itself was found in order, but was recording less energy consumption due to the meter not getting Y & B phase Voltages, due to a loose screw of PT Tapping points. 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.



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- (xi) The Consumption pattern of the Appellant as per Consumer Personal Ledger (CPL) is as below: [Note: The chart is prepared by this office as per data available in CPL].

Table 3:

Sr. No.	Period	Months	Recorded Cons. (units)	Avg. Monthly Cons. (units)	Remarks
1	Apr. 2018 to Jun. 2019	15	21,000	1,400	
2	Jul. 2019 to Mar. 2020	9	90,275	10,031	Meter replaced by a new meter [Genus Make (No. 5811201) having Type- 3ph 4w, 40-200A] in July 2019
3	Apr. 2020 to Mar. 2021	12	1,42,079	11,840	
4	Apr. 2021 to Mar. 2022	12	-	-	No data available due to technical reason in system.
5	Apr. 2022 to Mar. 2023	12	1,30,184	10,849	
6	Apr. 2023 to Mar. 2024	12	4,28,655	35,721	
7	Apr. 2024 to Jul. 2024	4	50,154	12,539	
Note	Y & B Phase PT missing was found from 02/03/2023 to 10/03/2023 & 17/08/2020 to 10/03/2023				

From the above table, it is clearly established that earlier the recorded consumption (up to March 2023) was under billed.

- (xii) 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.
- (xiii) In the circumstances, the Respondent prays that the representation be rejected.

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 is used for the purpose of laser cutting, CNC bending and fabrication. The Appellant is regular in payment of bills and was/is billed under industrial tariff category.

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- (ii) The Respondent inspected the premises of the Appellant on 10/03/2023. This inspection was not done in the presence of the Appellant. There is no signature on the inspection report which was made just casually. The Respondent did not hand over a copy of this inspection report to the Appellant.
- (iii) The Respondent issued a supplementary bill of Rs 17,24,370/- for 1,91,419 units vide letter dated 06/04/2023 towards under-recording of consumption towards Y & B Phase PT missing. This supplementary bill is based on a wrong interpretation, and 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, 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 Genus Make (No. 5811201) having Type- 3ph 4w, 40-200 Amp Capacity is a special type of meter with CT & PT as an integral part of the meter. 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 Y & B Phase Voltages to the meter are to be treated as the meter being defective. **The Appellant should be assessed only for three months from the date of inspection (10/03/2023) as per Regulation 16.4.1 of MERC Supply Code & SOP Regulations 2021.**



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- (iv) The Appellant filed a grievance application with the Forum on 16/06/2023 which allowed 2 years' recovery. The Forum failed to understand that the meter was defective.
- (v) 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 Respondent. The Respondent failed to test the meter for about 60 months and hence the Appellant is not responsible for the same.
- (vi) The Appellant argued that his business is dependent on the detailed summary of every income and expense incurred by his organization in a specific financial year prepared on an accrual basis. At present, it is very difficult to adjust (recover from customers) such a huge amount.
- (vii) The Appellant prays that the Respondent be directed:
- i. to quash the supplementary bill of Rs 17,24,370/- for 1,91,419 units for 30 months, and to bill the Appellant for three months considering the meter as defective.
 - ii. to waive off interest and delayed payment charges levied, if any.

Analysis and Ruling:

4. Heard the parties and perused the documents on record. The details of the electric connection, Y & B Phase PT missing from 02/03/2023 to 10/03/2023 & 17/08/2020 to 10/03/2023 respectively, retrospective recovery are tabulated in Table 1. The supply of this connection is used for the purpose of laser cutting, CNC bending and fabrication.



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5. The existing meter of the consumer is of Genus Make (No. 5811201) having Type- 3ph 4W, 40-200 Amp Capacity. The same meter is working from July 2019 till date, after tightening of its screws and restoring normalcy after inspection.

6. The Respondent inspected the installation of the Appellant on 10/03/2023, when it was observed that “Y & B Phase Voltages” were missing on the meter display, which were not extended to the meter terminal connection due to a loose connection of the screws where it was tapped from the main cable. Hence, the meter was recording less energy consumption by 66 % at the time of inspection. The “Y & B Phase Voltage” was not extended to the said meter as per the MRI report dated 10/03/ 2023 for the period as below:

Table 4:

Description	From	To
Y Phase Potential Missing	02/03/2023 at 23.48.53 Hrs.	10/03/2023 at 13.03.05 Hrs.
B Phase Potential Missing	17/08/2020 at 03.03.35 Hrs.	10/03/2023 at 13.03.05 Hrs.

Accordingly, the Respondent issued a supplementary bill of Rs.17,24,370/- for the period from 17/08/2020 to 10/03/2023 i.e. 30 months.

7. The Appellant contended that he should be billed only for three months, as missing of PT Voltages 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. The said Regulation is reproduced below: -

“16.4.1. Subject to the provisions of Part XII and Part XIV of the Act, 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.”



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8. 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 which is evident from the fact that the same meter is still operating satisfactorily, after the screws were tightened on 10/03/2023. Y & B Phase PT Voltages were not extended to the meter due to loosening of screws for the period from 02/03/2023 to 10/03/2023 & 17/08/2020 to 10/03/2023 respectively.

9. The Forum by its order has already considered under-recording as tabulated in Table 1 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

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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.

10. 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.17,24,370/- for the period from 17/08/2020 to 10/03/2023 as per MRI Report. However, the retrospective recovery was revised to Rs. Rs. 13,65,740/-in July 2024 for the period from April 2021 to March 2023 (24 months).



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11. 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 April 2023 onwards till the date of this order.
- ii. The Appellant may be granted twelve equal monthly instalments without DPC and interest, to pay the revised bill. If the Appellant fails to pay the monthly installment along with its current bill, the Respondent is permitted to recover the interest proportionally for the failure period, 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.

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

13. 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
Electricity Ombudsman Mumbai

