

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 79 OF 2024

In the matter of assessment towards slowness of meter

Technova Imaging System Pvt. Ltd.,.....Appellant
(Consumer No. 028619025980)

V/s.

Maharashtra State Electricity Distribution Co, Ltd. Vashi CircleRespondent
(MSEDCL)

Appearances:

Appellant : 1. Vinod Telawane,
2. B. R. Mantri, Representative

Respondent : 1.R.G. Bele, Executive Engineer (Admin), Vashi
2. Rajiv Vaman, Asst. Law Officer
3. Pranay Chakraborty, Addl. Executive Engineer


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 30th May 2024

Date of Order : 4th June 2024

ORDER

This Representation was filed on 26th April 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 main


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order dated 17th October 2022 and review order dated 27th February 2024 passed by the Consumer Grievance Redressal Forum, Bhandup Zone (the Forum). The Forum dismissed the grievance applications in the original as well as review order in Case No. 125 of 2020-21 and R125 respectively.

2. Aggrieved with the original & review order of the Forum, The Appellant has filed this Representation. A physical hearing/e-hearing was held through video conference on 30th May 2024. The Appellant was physically present, while, the Respondent attended the hearing through Video Conference. Parties were heard at length. The Respondent MSEDCL filed its reply on 17th May 2024. Its submissions and arguments are stated first for easy understanding as follows: - *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' in brackets where needed.]*


- (i) The Appellant is an Industrial Consumer (Cons. No. 028619025980) from 11.10.2002. The Appellant is in the business of manufacturing of full range of Digital Offset Plates & Printing Chemicals. Details of the electric connection are as below:

Table 1:

Name of Consumer	Consumer No.	Address	Consumer Demand & Sanct. Load	Purpose	Date of supply	Detail of Meter Testings	Meter Replacement
Technova Imaging System Pvt. Ltd.,	028619025980	Plot No.C-2, MIDC Talaja, Tal-Panvel	800 KVA & 1250 KW	Industrial	11.10.2002	(i) Meter tested on site on 12.05.2017 & meter found in order. (ii) Meter tested on site on 12.10.2018 & found (-)1.15 % slow .(iii) Meter tested in Meter Testing Laboratory on 27.02.2019 & found (-)1.264 % slow	The meter was replaced by a new meter on 20.02.2019

Preliminary Submission:

- (ii) The Appellant filed a grievance before the Forum on 22.03.2021. The cause of action was for the period 12.05.2017 to 31.01.2019. A supplementary bill was raised in Jan 2019, & for 01.02.2019 to 20.02.2019 when a supplementary bill was raised in Feb. 2019. The claim of the Appellant is time barred and beyond the


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limitation period of two years as per Regulation 7.9 of CGRF & EO Regulations 2020. The Appellant was not vigilant but was content to be dormant, and chose to sit on the fence till a long lapse of time.

- (iii) The Respondent referred to the Judgement dated 21.08.2018 of Aurangabad bench of Bombay High Court in W.P.No.6859, 6860, 6861 & 6862 of 2017 in the matter of MSEDCL Vs. Jawahar Shetkari Soot Girni Ltd. wherein the High Court discussed the order of HPCL and M/s.Shilpa Steel Pvt. and held that “cause of action” would mean an actual date of legal injury/grievance caused to the consumer, and the time limit of two years will start from there.
- (iv) The Respondent referred and relied on the decision of the Electricity Ombudsman by its order dated 16.08.2019 which upheld the above view and dismissed the Rep.No.68, 69 & 71 of 2019 in respect of M/s. G. M. Syntex. The Bombay High Court Nagpur Bench in its Judgment dated 08.01.2020 in matter of W.P.No.1588 of 2019, MSEDCL vs. Mahamaya Agro Industries has upheld the above view and held that the limitation to file a grievance before the Forum is two years from the date of cause of action.

Main Submission:

- (v) The metering of the Appellant is indoor (HTMK) 3CT-3PT metering arrangement. A Meter (Sr.No. 00381762) of HPL Make having CT ratio of 20/5A and PT ratio of 22/110 V was provided to the Appellant. As per Commercial Circular No. 291 dated 29.06.2017, regular Meter testing of HT/ EHV consumers is carried out as under:
- a) up to 1000 KVA- Yearly
 - b) > 1000 KVA & up to 3000kVA- Half yearly
 - c) >3000 KVA- Quarterly
- (vi) Testing Division Vashi visited the Appellant’s premises on 12.05.2017 for annual load test but observed no abnormalities in metering. However, during the annual load test on 12.10.2018 and 26.11.2018, the testing team reported that the meter


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error of Meter No. 00381762 was (-) 1.15 % which was not within the limit of accuracy. Accordingly, an assessment of Rs.4,94,047/- for unbilled consumption of 66,049 units for the period of 21 months i.e. from 12.05.2017 to 31.01.2019 was carried out and charged in the energy bill of Jan 2019. The Testing Division on 20.02.2019 replaced the old Meter No. 00381762 with a new Meter No. 12627093 of L&T Make. On the basis of load test dated 12.10.2018 and 26.11.2018, the assessment of Rs.16,690/- of 2231units for the period of 01.02.2019 to 20.02.2019 (i.e. date of meter replacement) was carried out and charged in the energy bill of Feb.2019. The details of both the assessments are tabulated as below:

Table 2:

Error in Meter during Site Testing	Recorded Consumption during Assessment period	Unbilled/less recorded Cons. (Units)	Period	Assessed Units	Assessment (Rs.)	Remarks
1	2 =(98.85 %)	3=1.15/98.85	4	5		6
(-)1.15%	5677352	66049	12.05.2017 to 31.01.2019 (21 months)	4,94,047	4,94,047	Error during testing on site (assessment up to month end Jan. 2019)
(-)1.15%	191792	2231	01.02.2019 to 20.02.2019	2231	16,690	Error during testing on site (assessment upto meter replacement)
Total	5869144	68280	12.05 .2017 to 20.02.2018	496278		

- (vii) The Testing Division finally reported vide letter dated 27.02.2019 that the old meter was tested in MSEDCL Lab, and the error was found as (-) 1.264%. Therefore, final assessment of Rs.50,104/- for difference of 1.15 % to 1.264% unbilled consumption of 6698 units for the period of 21 months was carried out and charged in the energy bill of March 2019. The details of assessment are tabulated as below: -




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Table 3:

Error after tested in Testing Lab	Consumption from 12.05.2017 to 20.02.2019	Error as per site testing	Difference	Assessed Units	Assessment (Rs.)
1	2	3	4=1-3	4	5
(-) 1.264	5869144	(-)1.15%	(-) 0.114	6698	50104

- (viii) Due to under-recording of the meter by (-) 1.264% for the period from 12.05.2017 to 20.02.2019, the total unbilled assessed units work out to 74978(66049 + 2231+ 6698= 74978). The Appellant consumer was duly replied and explained about the assessment vide letter dated 15.03.2019.
- (ix) The Regulation 3.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations 2005) enables the MSEDCL to recover the charges for the electricity actually supplied as per prescribed rates. The consumer therefore has to pay the full charges for the electricity actually consumed.
- (x) If the meter as such is faulty and no data is apparently available for fair assessment of consumption, the Regulation 15.4.1 of Supply Code Regulations 2005 comes into play. However, in the instant case, the meter was recording less only by 1.264%, hence it is not a “defective” meter. In view of the above, and as MRI data of the meter, the Respondent calculated a fair assessment, and hence the provisions of Regulation 15.4.1 do not apply in the instant case.
- (xi) In a similar matter of M/s. Achles Knitwear Pvt. Ltd. V/s MSEDCL, wherein the consumer meter was recording less by 45.64% due to R Phase CT saturation, the Hon'ble Electricity Ombudsman vide its order dated 30.06.2023 in Representation no. 42 of 2023 also upheld recovery of assessed units.


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- (xii) The present case is a clear case of escaped billing. The MSEDCL would like to rely upon the Judgment of Hon'ble Supreme Court dated 5th October 2021 in Civil Appeal No. 7235 of 2009 in the matter of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others. It has clearly differentiated between application of Section 56 of the Act for "escaped assessment " v/s " deficiency in service". The Hon'ble Supreme Court has allowed past recovery which was escaped assessment due to a bona-fide mistake of the licensee. The Court further held that the limitation provided under Section 56(2) will not be applicable for "escaped billing" due to a bona-fide mistake.
- (xiii) In the present case the period of assessment is restricted to within 24 months from the date of detection, therefore recovery of unbilled consumption is well within limitation as provided under Section 56(2) of the Electricity Act, 2003 (the Act) and as such recoverable. In the instant case meter/CT/PT's are not defective, but only the meter is recording less by 1.264%. Hence, this case is not of defective meter.
- (xiv) In view of the above-mentioned facts, it is requested that the representation of the Appellant be rejected being not maintainable and filed without any merit.


3. The Appellant's submissions and arguments advanced in the hearing are stated as below:

A. Representation is not time barred:

- (i) The Appellant is one of the world's largest suppliers of print solutions. Technova's innovative and world-class products cater to a wide range of industries, such as Commercial & Newspaper Printing, Publishing, Packaging, Signage, Photo, Textile, Engineering & Medical Imaging.
- (ii) The Appellant highlighted the cause of action / date of Limitation issue as below:

Cause of Action:

MSEDCL recovery bill	:	06/02/2019, 06/03/2019 and 09/05/2019
Objection dates	:	08/02/2019 and 04/03/2019
MSEDCL Reply date	:	20/03/2019 Received 25/03/2019
IGRC Application	:	19/08/2019


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IGRC Hearing : 30/10/2019
CGRF Application : 22/03/2021.

Cause of Action date: Reply received date 25/03/2019, MSEDCL last Recovery bill was dated 09/05/2019 and grievance application in IGRC was 19/08/2019 which is still pending. The IGRC conducted the hearing on 30/10/2019, and MSEDCL requested postponement of hearing. The IGRC has not issued any order nor rejected the grievance on the grounds of cause of action or limitation period.


- (iii) The Appellant referred to the Judgement dated 05/06/2020 of the Supreme Court in Cases of Rashtriya Ispat V/s Prathyusha (Appeal No. 3699 of 2006, order dated 12/02/2016) and Shakti Bhog V/s Central Bank of India (Civil Appeal No. 2514 of 2020, order dated 05/06/2020). It was established that

"The cause of action arises when the real dispute arises, i.e., when one party asserts, and the other party denies any right."

- (iv) Due to the COVID-19 lockdown, the Supreme Court issued an order on 10/01/2022 allowing an extension of the limitation period. It held that

"In cases where the limitation would have expired during the period between 15.03.2020 and 28.02.2022, all persons shall have a limitation period of 90 days from 01.03.2022. If the remaining limitation period from 01.03.2022 is greater than 90 days, that longer period shall apply. This is applicable to filing petitions/applications/suits/appeals/other quasi-judicial proceedings."

Due to COVID-19 Pandemic, the Appellant was unable to appeal before 22/03/2021. MSEDCL's reply was received on 25/03/2019 and their application to the Forum was on 22/03/2021, i.e. within two years. From the above submission, it is clear that their application is within the limitation period as per



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Covid-19 Pandemic direction from Supreme Court and also filed within 2 years from the reply received.

B. Technical Grounds:

- (v) The Respondent's testing team visited our site on 12/10/2018 and tested the meter for a short duration of 16 minutes, and found the meter to be 1.15% slower than permissible limits. The meter has not been tested according to the procedure outlined in the IS standard. IS 15707:2006 specifies the procedure for testing meters on-site in Section 12.2. For HV installations, the **Meter and CT/PT** should be tested separately, and the meter of at least the same or better accuracy class shall be installed for minimum one billing cycle. In the present matter, only the meter has been tested, but **CT/PT has not been tested**. Consequently, the error will be a combination of both.
- (vi) The Respondent was unable to repair the meter. So, it declared the meter faulty and replaced it on 20/02/2019. If the meter was beyond repairs and it required replacement, it means that the meter was faulty.
- (vii) MSEDCL issued a debit bill adjustment for 66,049 units in Jan-2019, 2,231 units in Feb. 2019, and 6,698 units in April 2019, a total of 74,978 units. This assessment assumed that the meter was running slow right from the previous testing date of 12/05/2017 (when the meter was found normal) until the replacement date of 20/02/2019, covering 21 months.
- (viii) When the Appellant took an objection for the supplementary bill on 10/03/2019, the Respondent informed that the debit bill recovery was raised due to meter slowness of 1.264%. They could not determine the exact date of the meter fault, so they considered the last date of testing (12/05/2017) as the starting date of


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slowness until the replacement date (20/02/2019) for 21 months. In this connection, the Appellant states that:


- The Respondent tested the meter onsite without CTPT connections using ZERA, finding a 1.15% error.
- After replacement with the new meter, the old meter was tested in the lab and % error was (-) 1.264. In this case also accuracy of the meter was not tested with associated equipment such as CT and PT.
- The Respondent informed that assessment should be based on $0.5 - 1.264 = -0.764\%$. But actually charged at -1.264% for 21 months, from the last satisfactory test date (12/05/2017).

(ix) **The Respondent's testing team incorrectly considered a 0.5s accuracy class meter's % error to be (+/-) 0.5%, while IS standard IS 15707: 2006 allows a maximum permissible error of (+/-) 1% for 0.5s class meters.**

(x) The Indian Electricity Act 1910, Section 26 provides that in the absence of an agreement to the contrary, the amount of energy supplied to a consumer, or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter.

Sub-sections (6) & (7) of Section 26 of the Act are relevant and read thus: -

*"(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, **not exceeding six months**, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:*


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- (xi) With reference to the Electricity Act 2003, Central Electricity Authority has formed a Forum of Regulators (FOR) forum for preparation of Model of Supply Code based on which all SERCs shall follow the minimum requirements.

Forum of Regulators- Model Supply Code in Procedure for Billing under Special Circumstances for defective meter read as below:

“Billing in case of defective/stuck/stopped/burnt meter:


6.11 In case of defective/stuck/stopped/burnt meter, the consumer shall be billed on the basis of average consumption of the past three billing cycles immediately preceding the date of the meter being found/reported defective. These charges shall be leviable for a maximum period of three months only during which time the licensee is expected to have replaced the defective meter.”

- (xii) **The Section 55 of the Act speaks as : ---**
- (1) *No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority:*
- (2) *A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error.*
- (xiii) **The Regulation 14(2)(a) of CEA Regulations 2006** further provides that the meter reading and recording consumer meters shall be the responsibility of the licensee to record the metered data, maintain database of all the information associated with consumer meters and verify the correctness of metered data.

The clause 14 is reproduced as under:

“14. Meters

A. Providing of Meter by the Board


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Correct meter shall be installed, sealed, and maintained by the Board at each point of supply on the premises of the consumer and shall be and remain the property of the Board. The Board reserves the right to fix the position of the said meter at an appropriate place on the consumer's premises."

- (xiv) **The definition of "meter" and "correct meter" as specified in the Notification dated 17.3.2006 by the Central Electricity Authority, New Delhi in Regulations for installation and operation of meters.**

The definition of "meter" and "correct meter" are reproduced here as under:

"(p)'Meter' means a device suitable for measuring, indicating, and recording consumption of electricity or any other quantity related with electrical system and shall include, wherever applicable, other equipment such as Current Transformer (CT), Voltage Transformer (VT) or Capacitor Voltage Transformer (CVT) necessary for such purpose.

(k) '**Correct Meter**' means a meter, which shall at least have, features, Accuracy Class, and specifications as per the Standards on Installation and Operation of (5 of 6) [CW-1439/2015] Meters given in Schedule of these Regulations;"

The definition of a '**defective meter**' has not been provided, thus the definition of 'correct meter' must be considered and applied in the Appellant's case because the meter was not correctly recording consumption due to internal fault of meter.


- (xv) The Supply Code Regulations 2005 specify that

"14. Meters:

14.3 Reading of Meter: Meter readings shall be undertaken by the Authorized Representative at least once in every three months in the case of agricultural consumers, and at least once in every two months in the case of all other consumers, unless otherwise specifically approved by the Commission for any consumer or class of consumers.

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.


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15. Billing:

15.4 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 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 Section 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 billed 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.

From a plain reading of 1st proviso of Clause 15.4.1, if the meter is broken or damaged (stopped recording), then the consumer shall be billed on the basis of average consumption of last 12 months for a maximum period of three months, and if the meter is found slow or fast, assessment as per test report can be for a maximum period of three months.”

- (xvi) The dispute between the parties is covered by the provisions of Section 15.4.1 of MERC Supply Code Regulation 2005. As per this regulation, the dispute period which could be considered would be the period of three months immediately prior to the date on which the defect was noticed.

The regulation 15.4.1 provides that, barring the dispute for the aforesaid three months, the register of the meter shall, in the absence of fraud, be conclusive proof of the amount or quantity or electric energy supplied to the consumer. In other words, a statutory irrebuttable presumption is that prior to the period of three months the meter is deemed to be good, and the rights and liability of the parties


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are concluded by reading of the meter, until and unless any doubt is raised about the correctness of the meter. Such doubt raised, if any must be finally scrutinized and decided after the testing of meter at laboratory. The different parts of the Act and Regulations only manifest that the original correct meter once duly installed with the concurrence of concerned parties, acquires a sacrosanct status.

The limit of three months is to be co related with the primary rule contained in sub- section (1) of Section 55 of the Electricity Act 2003, which requires that the amount of energy supplied shall be ascertained by means of a correct meter.

1. MERC ruling in case no. 19 of 2004 dated 23/02/2005 in matter of defective meter:


"If meters are found to be defective upon subsequent testing (and results are intimated to the consumer), bills may be adjusted for up to three months prior to the date of testing or meter replacement, whichever is earlier. Assessment should be based on test results, subject to providing the test report."

2. **Bombay High Court in the matter of MSEB V/s Hindustan Gas Industries Ltd** in the matter of slow meter recovery pertaining to the Indian Electricity Act 1910 Section 26(6). In this matter Mumbai High Court held that

"Such legislative change by the amendment of sub-section (6) of Section 26, in our view, has been introduced to set at rest any dispute between the licensee and the consumer about the actual consumption of the quantity of electricity by the consumer where no fraud has been practiced by the consumer for all other period anterior to statutory period for estimation.

There is good reason for such legislative change because it may not be possible to precisely determine exactly from which point of time the meter ceased to be correct.

The dispute between the parties is covered by the provisions of Section 26(6) of the Indian Electricity Act, 1910. Even if the Electrical Inspector were to arbitrate upon the dispute, the only period of dispute which could be considered would be the period of six months immediately prior to the date on which the defect was noticed.


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3. The Respondent checked the MRI readings at billing time and approved the billing. For two years, the Respondent did not identify slowness in MRI data. The Respondent now claims that the exact date of meter slowness cannot be determined, which implies that even after studying MRI data, engineers could not pinpoint the exact date of meter slowness. The EE testing report of the Respondent clearly states, *“It is not possible to determine the exact date of meter accuracy drift.”*
4. This is not a case of escaped billing or bona-fide error as stated by the Respondent, so this submission is not applicable in this case.

- (xvii) In view of the above, the Appellant prays that the Respondent be directed
- a. to withdraw the supplementary bills and to revise as per Regulation 15.4.1 of Supply Code Regulations 2005.
 - b. to refund the excess amount collected with interest as per Section 62(6) of the Act.

4. The Appellant’s representative by its email (May 30, 5:34 AM) sent an attached letter which states that,


“After careful consideration, we have chosen to withdraw our representation application from the Electricity Ombudsman.

We are hereby officially withdrawing our representation no. 79 of 2024.”

Analysis and Ruling

5. Heard the parties and perused the documents on record. The dispute related to the slow running of the meter and the correct period of assessment. The Appellant by its letter dated 30/05/2024 has withdrawn the representation. This authority accepts the withdrawal, and this Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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