

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 98 OF 2024

In the matter of live arrears of MSEDCL prior to TPL Franchisee

Mr. Fakhruddin Chitalwala (Service No. 14362351325)Appellant

V/s.

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

Torrent Power Limited (TPL), Distribution Franchisee, Bhiwandi

Appearances:

Appellant : 1. Fakhruddin Chittalwala
2. Mohammed Husen, Representative
3. Somesh Pathak, Representative

Respondent : 1. Ajay N. Bhasaketre, Addl. Ex. Engineer, TUC, MSEDCL
2. Manoj Jadhav, Dy. Manager (F & A)
2. Hemangi Bhogvekar, Nodal Officer/ Manager, TPL
3. Sameer Desai, Manager, TPL


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 25th July 2024 &
25th October 2024

Date of Order: 7th November 2024

ORDER

This Representation was filed on 17th May 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity


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Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 18th March 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum) in Case No. 119 of 2023-24. The statutory deposit of Rs. 25000/- was paid on 30th May 2024 as per Regulation 19.22 (h) of CGRF & EO Regulations 2020. Hence the Representation was registered on 30th May 2024. The Forum by its order has dismissed the grievance application of the Appellant. The Forum observed that the cause of action of the alleged power factor penalty was of the year 2001 when this grievance mechanism did not exist, and the cause of action for the alleged excess billing was for the period from the year 2003 to 2007. The grievance filed by the Appellant is time barred, being filed much after 2 years from the date of cause of action.


2. The Appellant has filed this representation against the order of the Forum. Physical and online hearings through video conferencing were held on 25th July 2024 & 25th October 2024. Both the parties were heard at length. The Appellant's submissions and arguments are as below. *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' where needed.]*


- (i) The Appellant is an industrial consumer from 6.11.1998 having the activity of winding of sewing threads on various reels. Details of consumer number, sanctioned load, address etc. are as below:

Table 1:-

Sr. No.	Name of Consumer	Service No.	Address on Bill	San. Load (HP)	Date of Supply
1	Fakhruddin Chitalwala	14362351325	Gala No. B/4-5, Raj Rajeshwari Compound, Village -Sonale, Taluka-Bhiwandi	15	06.11.1998

- (ii) The Appellant raised the following two issues in its Representation:


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(a) **Wrong Power Factor Penalty:**

The Appellant was wrongly billed for power factor penalty for non-installation of appropriate capacitors for the period from 2001 to 2004. The Appellant installed the required 5 KVAR capacitors on 25/12/2000. The Appellant by its letter dated 26/02/2001 intimated to the Respondent and requested to stop levying capacitor penalty. The Respondent inspected the premises on 24/08/2001 and confirmed that 5 KVAR capacitor of Siemens make was working. The said Inspection Report is kept on record. He requested to refund the PF Penalty of Rs. 30,469/- which was wrongly charged for the period from 2001 to 2004.

(b) **Wrong Billing from 24.02.2003 to 23.01.2007:**

The Appellant was billed with wrong readings for the period from 24.02.2003 to 23.01.2007 as tabulated below.

Table 2:




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Sr. No.	Month	Current Reading in CPL (KWH)	Reading Date	Cons. (Units)	Meter Status	MSEDCL Pass Book Reading	
						Actual Reading (KWH)	Date
		11168 (Previous Reading)	27.01.2003				
1	Feb-03	12870	24.02.2003	1702		9914	25.02.2003
2	Mar-03	12870	26.03.2003	1121	Lock (Refundable)		
3	Apr-03	14641	28.04.2003	1771	lock billing refunded		
4	May-03	15691	27.5.2003	1050			
5	Jun-03	17091	26.06.2003	1400		11376	28.06.2003
6	Jul-03	18741	25.07.2003	1650		11449	07.01.2003
7	Aug-03	20991	28.08.2003	2250		12845	30.08.2003
8	Sep-03	23241	27.09.2003	2250			
9	Oct-03	25491	29.10.2003	2250			
10	Nov-03	27741	27.11.2023	2250			
11	Dec-03	29991	27.12.2003	2250			
12	Jan-04	32195	22.01.2004	2204		16006	25.01.204
13	Feb-04	34345	20.02.2004	2150			
14	Mar-04	35908	20.03.2004	1563			
15	Apr-04	37718	23.04.2004	1810			
16	May-04	39560	24.05.2004	1842			
17	Jun-04	41816	23.06.2004	2256			
18	Jul-04	...	23.07.2004		bill not available	24271	10.07.2004
19	Aug-04	...	23.08.2004		bill not available	25384	27.11.2004
20	Sep-04	48344	23.09.2004	2428			
21	Oct-04	50825	25.10.2004	2481			
22	Nov-04	50825	24.11.2004	2185	Avg. billing		
23	Dec-04	52852	23.12.2004	2027			
24	Jan-05	---	23.01.2004		bill not available		
25	Feb-05	57452	27.02.2005	2250	2250	27432	28.02.2005
26	Mar-05	59714	23.03.2005	2262		28114	25.03.2005
27	Apr-05	61980	23.04.2005	2266			
28	May-05	64250	20.05.2005	2270			
29	Jun-05	66502	20.06.2005	2252		30061	27.06.2005
30	Jul-05	66502	20.07.2005	2275	Lock (Refundable)		
31	Aug-05	68760	22.08.2005	2258	lock billing refunded		
32	Sep-05	71197	22.09.2005	2437			
33	Oct-05	73450	21.10.2005	2253			
34	Nov-05	75700	22.11.2005	2250		35214	30.11.2005
35	Dec-05	78786	26.12.2005	3086			
36	Jan-06	81040	25.01.2006	2254		39028	30.01.2006
37	Feb-06	83341	27.02.2006	2301		40188	28.02.2006
38	Mar-06	83341	27.03.2006	2430	Faulty	41646	27.03.2006
39	Apr-06	83341	27.04.2006	2430	Faulty	44610	30.04.2006
40	May-06	83341	27.05.2006	2430	Faulty	48000	31.05.2006
41	Jun-06	83341	27.06.2006	2430	Faulty	49147	27.06.2006
42	Jul-06	83341	27.07.2006	2430	Faulty	51317	25.07.2006
43	Aug-06	85595	28.08.2006	2254		52852	25.08.2006
44	Sep-06	87845	28.09.2006	2254		54035	29.09.2006
45	Oct-06	90093	26.10.2006	2248			
46	Nov-06	92371	26.11.2006	2278			
47	Dec-06	92371	26.12.2006	2264	Faulty	58580	30.12.2006
48	Jan-07	92371	26.01.2007	2265	Faulty		
	Avg. of 45 months			2156			
Note:	1. The Respondent MSEDCL billed excess for 33791 (=92371-58580) units as per the consumer. 2. The opening TPL reading of the said meter was 61712 KWH in Feb. 2007(and not 92371 KWH).						


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- The correct readings taken by the meter readers were recorded in the 'passbook', issued by the Utility to the consumer at that time, and the units charged by the Distribution Licensee are in excess by 33791 units over that recorded in the passbook. Even then, they billed hypothetically with an average of 1500 units per HP instead of the actual readings on record. The Appellant requested to revise the bills as per actual readings for the period from 24.02.2003 to 23.01.2007, and to waive off outstanding dues being reflected in the electricity bills during the MSEDCL period (pre – 2007).
- The Appellant vide letters dated 17.01.2004, 22.03.2013, 03.08.2013 and 21.03.2014 informed the Distribution Licensee that he was wrongly penalized for the PF penalty and incorrect bills. However, the Distribution Licensee failed to take any action on the repeated requests of the consumer. *[Note : The Appellant has not explained why he did not file his grievance even after 2014].*
- The Appellant has paid the electricity dues under protest on the following dates as charted below with the fear of electricity supply being disconnected:-

Table 3:-

Amount Paid	
Rs.	Date
24,540	26.04.2003
36,020	01.11.2003
1,10,000	25.11.2005
1,00,000	20.01.2006
25000	02.11.2006
2,05,560	Total (Feb.2003 to Dec.2006)
95,000/-	29/01/2024

[Note : The question arises as to what caused the Appellant to pay the amount of Rs. 95000/- in Jan. 2024, after more than 17 years of the last payment. During the hearing it was revealed that he applied for extension of load from 15 HP to 27 HP in Jan. 2024. This was granted after


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he paid the amount of Rs.95,000/- on 29.01.2024, which was the principal amount of MSEDL's outstanding dues as on 2007 when the TPL franchisee started.]


- (iii) The Appellant filed its grievance application for revision of his bills in the Forum on 28/11/2023. The Forum by its order dismissed the grievance application of the Appellant. The Forum failed to understand that the grievance was not time barred, as the cause of action was continuous in nature.
- (iv) The Forum failed to adhere to Regulation 9.2 of CGRF & EO Regulations 2020 which is produced as below:

“9.2 If, after the completion of the proceedings, the Forum is satisfied after voting that any of the allegations contained in the Grievance is correct, it shall issue an order to the Distribution Licensee directing it to do one or more of the following things in a time bound manner, namely-

- (a) remove the cause of Grievance in question;*
- (b) return to the Complainant the undue charges paid by the Complainant along with interest, at the rate equal to Bank Rate declared by the Reserve Bank of India prevailing during the relevant period;*
- (c) pay such amount as may be awarded by it as compensation to the Complainant as specified by the Commission in the standards of performance of Distribution Licensees: Provided that in no case shall any Complainant be entitled to indirect, consequential, incidental, punitive, or exemplary damages, loss of profits or opportunity;*
- (d) any other order, deemed appropriate in the facts and circumstances of the case:*

Provided that the Forum may order partial relief to the Complainant under appropriate circumstances, duly recorded with proper justification.”

The Forum has the power to decide the grievance on merit, however, it failed to do so and unnecessarily rejected the grievance as time barred, though the cause of action was continuous till the filing of the grievance in the Forum.


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- (v) The Appellant cited the Section 6 of Maharashtra Electricity Duty Act 2016 which is quoted as below:

"(8) Notwithstanding anything contained in the foregoing sub-sections, where the State Government is satisfied that there is a bonafide mistake, on the part of any licensee or a person supplying energy to the consumers or consuming energy for his own use, in paying the proper electricity duty, on account of wrong meter reading or misclassification of consumption falling under any particular Part or clause in the Schedule, the State Government may, at any time, by an order, waive or write-off, with retrospective effect, the recovery of the amount of the electricity duty or any part thereof due at the proper rate and the amount of interest thereof, if any, payable for delayed payment under section 11."

- (vi) The Appellant relied on the Judgment of Hon'ble High Court of Bombay dated 25 April 2003 in Maharashtra State Road Transport V/s Premalal S/O Khatri Gajbhiye 2004(2) BOMCR 338 which held that

"19. The Apex Court in Shree Dhyaneshwar Maharaj Sansthan's case (supra) has ruled that "if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from 'the act may continue". Referring to this rule, it was sought to be contended on behalf of the Corporation that there was specific denial of the alleged right under Clause 49 of 1956 settlement prior to the period of three years from the date of the filing of the complaint and, therefore, there was "ouster" of the respondents as far as the right under Clause 49 of 1956 settlement is concerned and as such resulting injury to the right was complete on the said date of ouster and what followed was only the result of the said injury and therefore, there was no recurring cause of action as such so as to justify entertainment of the complaint even after the period of three years from the date of such ouster. The contention of the appellant in this regard is to be rejected as the very decision of the Apex Court leaves no scope for any such arguments in the facts of the case in hand. The Apex Court while delivering the said decision has held that "if, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a


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continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterized as continuing wrongs that Section 23 can be invoked”

.....
26. *It is well settled that as long as the default in performance of obligation continues, the wrong is deemed to have continued and therefore, it is to be taken as a continuing wrong. If the duty continues from day to day, the non-performance of that duty from day to day is a continuing wrong. (Vide Smt. Maya Rani Punj v. Commissioner of Income Tax, Delhi).”*

In the instant case, the cause of action was continuous by way of various correspondences with the Respondent. Hence the grievance of the Appellant is within the period of limitation.

(vii) The Appellant cited the following Judgments in support of its arguments.

(a) Supreme Court Judgment dated 13/08/2008 in Case of Union of India & Anr V/s Tarsem Singh in Civil Appeal No. 5151-52 of 2008 held that

“4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A `continuing wrong' refers to a single wrongful act which causes a continuing injury. `Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare vs. Shree Dhyaneswar Maharaj Sansthan - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of section 23 of Limitation Act, 1908 corresponding to section 22 of Limitation Act, 1963) :

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."



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(b) *High Court Judgment dated 20/11/2019 in WP No. 563 of 2017 in case of Jaihind Sahakari Pani Purvatha Mandali Ltd. V/s. Rajendra Bandu Khot & Ors. held that*

“8 The Supreme Court has explained the difference between a continuous wrong and recurring or successive wrongs in the case of Union of India vs. Tarsem Singh I. A continuing wrong is a single wrong causing a continuing injury. In case of a continuing wrong, the grievance essentially is about an act which creates a continuous source of injury and renders the doer of that act responsible and liable for continuance of that injury. The injury is not complete when the act is committed; it continues even thereafter; and so long as it does, the cause of action itself continues. A recurring or successive wrong, on the other hand, occurs when successive acts, each giving rise to a distinct and separate cause of action, are committed. Each act, in itself wrongful, constitutes a separate cause of action for sustaining a claim or a complaint. It is important to bear in mind in this context the distinction between an injury caused by a wrongful act and the effect of such injury. What is to be seen is whether the injury itself is complete or is continuous. If the injury is complete, the cause of action accrues and is complete; the clock starts ticking for the purposes of limitation, notwithstanding the fact that the effect of such injury continues even thereafter. For example, let us take the case of an occupant of a house who is driven out of it. The injury is complete with the act of throwing him out, though the effect of that injury, namely, his being unable to use or occupy the house, continues even thereafter. Take, however, the case of a 1 (2008) 8 SCC 648 sat wp 563-2017.doc person who is detained in a house and not allowed to roam about. The act of detention is the one which causes an injury. This injury, however, is a continuing injury, since the injury here consists in being unable to move about. This injury continues and since the injury itself continues, the wrong is a continuous wrong and the cause of action, a continuing cause of action. Take, on the other hand, the case of a person who is barred from entering a house he is entitled to enter. When he is barred for the first time, an injury follows, and a cause of action thereby accrues. Each successive day on which he is so barred gives rise to a fresh and distinct cause of action, making it a case of recurring/successive wrongs.”

(c) *Supreme Court Judgment dated 30/01/1996 in Case of State Of Haryana vs Chandra Mani & Ors. held that*

“It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation


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and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. “

From the above Judgments, the Appellant emphasizes that it is well settled that the expression ‘sufficient cause’ is to receive liberal construction so as to advance substantial justice. When there is no negligence, the delay has to be condoned. In view of the above, the delay in filing the grievance be waived off.

(viii) In the light of the facts and the circumstances, the Appellant prays that the Respondent be directed:-


- (a) to refund the amount equivalent to Rs. 1,25,229/- with applicable rate of interest for wrong billing.
- (b) to refund the sum of Rs.30,468.97/- for the wrong penalty towards capacitor charged with the applicable rate of interest.
- (c) to issue the correct bill for the period from 24/02/2003 to 23/01/2007.

3. The Respondent MSEDCL and its Franchisee, TPL filed their written replies on 23.07.2024 and 28.06.2024 respectively. Their submissions and arguments are as below: -

(i) The Electricity Distribution Network Assets and Billing in Bhiwandi area was handed over to Torrent Power Limited (TPL) as the Franchisee of MSEDCL for a period of 10 years from 26.01.2007 to 25.01.2017, and further extended by 10 years.

The Superintending Engineer (SE) of MSEDCL, Bhiwandi was the Nodal Officer to coordinate with TPL on various issues including recovery from 2007 to 2018. From 2018 onwards till date, the SE (Thane Urban Circe), Thane is the Nodal Officer to resolve the billing complaints of the earlier MSEDCL period.

(ii) The service connection 14362351325 was released by MSEDCL for Industrial activity i.e. twisting / winding of sewing threads into reels, bobbins, etc. from 06.11.1998. The period


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of MSEDCL billing was from Nov. 1998 to Jan. 2007. Thereafter, TPL is billing the said consumer from Feb. 2007 onwards. **The MSEDCL arrears were also shown separately in the monthly bills issued to consumer.** [Note : we have checked the bill of Oct. 2023 which shows MSEDCL arrears of Rs. 4,36,226/-].


Preliminary Submissions:

(iii) The Appellant raised the grievance before the Forum on 28.11.2023 for Service No. 14362351325 as below:

- (a) to refund the wrong penalty charged against the capacitor for the period from 2001 to 2004,
- (b) to issue the correct electricity bill for the period 24.02.2003 to 23.01.2007 and waive off outstanding dues being reflected in the electricity bills of MSEDCL period.

At present, the electricity dues of TPL and MSEDCL are Rs.19,648/- and Rs.3,47,537/- (Principal Amount : Nil + Accumulated Interest: 3,47,537/-) respectively.

(iv) The cause of action of capacitor penalty was prior to the Electricity Act, 2003 (the Act) which clearly does not come under this grievance mechanism established as per the Act. The cause of action of the alleged wrong billing was for the period 24.02.2003 to 23.01.2007. The claim of the Appellant that “the cause of action is continuous” is faulty and frivolous. The MSEDCL arrears (principal amount) was Rs.95,000/- in 2007. Thereafter interest was continuously accumulating on this amount. It was in the Appellant’s interest to challenge this amount at that time, to avoid the interest. He neglected to do so. The latest outstanding interest amount is Rs.3.47 lakhs. The Appellant ought to have filed the grievance before the Forum within 2 years i.e. up to Jan. 2009 for the said cause of action. The Appellant filed the grievance in the Forum on 28/11/2023. The claim of the Appellant is time barred and beyond limitation as per Regulation 6.6 / 7.8 of CGRF and EO Regulations, 2006 / 2020 which provides that the Forum shall not admit any grievance


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unless it is filed within 2 years from the date on which the cause of action arose. Therefore, the claim of the Appellant is not maintainable at the initial stage itself.

- (v) To support the above submission, the Respondent relied upon the Judgment of Aurangabad bench of Bombay High Court dated 21.08.2018 in W.P. Nos. 6859, 6860, 6861 & 6862 of 2017 in Case of MSEDCL Vs. Jawhar Shetkar Soot Girni Ltd. & Others. The High Court has held that the 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 therefrom, and journey of grievance through IGRC should reach CGRF within a period 2 years from the cause of action. This Judgment is squarely applicable in this case. The relevant portion of the judgment is quoted below:

“37. As such, owing to these distinguishing features in the Electricity Act R/w the Regulations and on the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning leading to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in the order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute along with the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act. 39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well-established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4,



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6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation Dated: 27.08.2016. In the third petition, the FAC Bills from


January to March 2010 are subject matter of the representation to the Cell, Dated: 26.06.2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08.08.2016 with reference to the FAC Bills of December 2013, February and May 2014.


45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance. 46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”

- (vi) The Bombay High Court, Nagpur Bench in its Judgment dated 08.01.2020 in W.P.No.1588 of 2019, MSEDCL V/s. Mahamaya Agro Industries has upheld the above view and held that limitation to file grievance before CGRF is two years from the date of cause of action. The Respondent referred to the orders dated 16.08.2019 of the Electricity Ombudsman (Mumbai) in Case of M/s. G. M. Syntex V/s MSEDCL (Rep.No.68, 69 & 71 of 2019). The Electricity Ombudsman upheld the above views and dismissed the Rep.No.68, 69 & 71 of 2019. In view of the above, the claim of Appellant is time barred.

Reply on Merit: -

- (vii) The Appellant, during the hearing of the Forum case on 21.01.2024, gave a letter requesting to accept part payment of MSEDCL dues (principal amount) amounting to Rs.95,000/-, and to permit for payment of the remaining amount (interest) by installments, subject to


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the final order of the Forum. On 29.01.2024 he made a payment of Rs.95,000/- of MSEDCL dues, and simultaneously he applied for Tariff Change and Load extension against the said service, and the same was processed on 08.02.2024 with the specific condition of payment of balance outstanding dues. The Forum by its order dated 18.03.2024 has dismissed the grievance application of the Appellant. The Respondent TPL by its letter dated 23.03.2024 requested him to comply with the payments of the balance outstanding dues as assured. **But the Appellant by its letter dated 09.05.2024 requested to accept Rs.10,000/- as instalment per month to clear the MSEDCL dues amounting to Rs.3,47,537/- as on date.** The same was replied vide TPL reply dated 10.06.2024 to pay the MSEDCL dues of Rs. 3,47,537/- immediately. The Appellant, instead of paying MSEDCL dues and complying with his assurance has filed this instant Representation challenging the impugned order. The grievance is frivolous, vexatious and has absolutely no merit.

(viii) The Appellant contended that:

- 1) Wrong penalty was charged against the capacitor for the period from 2001 to 2004, &
- 2) The Appellant was billed with wrong readings for the period 24.02.2003 to 23.01.2007 and to waive off outstanding dues being reflected in the electricity bill of MSEDCL period.

The Respondent stated that no such old correspondence is available at present with its office, and hence it is not possible to comment on merit technically. If MSEB did not take any action around 2007, he had an opportunity to approach the Consumers Grievance Redressal Mechanism which was established by the Commission.

(ix) The Supply Code Regulations 2005 provided that the utility should form an Internal Grievance Redressal Cell (IGRC) to resolve consumers' complaints and grievances regarding billing and supply matters etc. If a consumer is not satisfied with the remedy provided by IGRC, he can apply to the Forum for redressal of his grievance. If he is not satisfied with the order of the Forum, he has an opportunity to make a representation before


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the Electricity Ombudsman against the order of the Forum. This mechanism was available from the year 2005 to 25.02.2021. The Supply Code Regulations 2005 & Standard of Performance Regulations were replaced by Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standard of Performance of Distribution Licensee including Power Quality) Regulation 2021 (Supply Code & SOP Regulations 2021) which is in force from 25.02.2021. As per this latest regulation, a consumer can **directly approach the Forum** by filing a complaint or grievance pertaining to electricity supply or billing matters. However, in the present case, the Appellant failed to do so, even in 2021, and **the consumer never raised any grievances for the MSEDCL arrears at that time.**

- (x) It was obligatory for the consumer to maintain the average PF of his load at the levels prescribed before the Electricity Act, 2003 came in force. The distribution licensee may require the consumer, within three months, to take measures to raise the average PF. The utility may charge a penalty or provide incentives for low/high PF. As per Regulations 22.20 of MERC Supply Code and SOP Regulations 2021, it is clearly mentioned that

“It shall be obligatory for the Consumer to maintain the average power factor of its load at levels in accordance with the relevant orders of the Commission: Provided that the Distribution Licensee may charge penalty or provide incentives for low / high power factor, in accordance with relevant Orders of the Commission.”

- (xi) The Judgments cited by the Appellant do not relate to the grievances under the Electricity Act 2003, MERC supply code & SOP Regulations 2021. Thus, the Judgments quoted by the Appellant for delay condonation do not apply to this grievance.
- (xii) The TPL replaced various meters under a Mass Meter Replacement Scheme in the year 2007. It was not possible to test all the replaced meters under this Scheme. The consumption pattern of the Appellant considerably increased as soon as the TPL installed a new meter from the year 2007. This indicates that the old meter might have been recording less energy consumption due to aging, and hence for some of the months, the


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Appellant was billed under Faulty Status with average consumption as shown in Table 2. **[MSEDCL dues have been shown continuously and demanded regularly in all the monthly bills over the years. However, the Appellant has neglected to pay the same.]**

- (xiii) The Respondent prays that the representation of the Appellant be rejected, and to direct him to pay the outstanding balance dues of Rs. 3,47,233/-.

Analysis and Ruling

4. Heard the parties and perused the documents on record. The Appellant is an industrial consumer from 06.11.1998 for the activity of twisting / winding of sewing threads into reels, bobbins, etc.. Details of consumer number, sanctioned load, address etc. are tabulated in Table 1.

5. The Appellant was the consumer of the erstwhile MSEB (now MSEDCL) up to 2007 and was billed as per the meter installed by MSEDCL. The Electricity Distribution Network Assets and Billing of Bhiwandi area was handed over to Torrent Power Limited as a Franchisee of MSEDCL for a period of 10 years from 26.01.2007, and the franchisee was further extended for 10 years up to 2027.

6. The TPL replaced various meters under its “Mass Meter Replacement Scheme”. According to TPL, it was not possible to test all the thousands of replaced meters, nor was it necessary to do so. The accuracy of the meter was never challenged in all these years when the current bills were being paid by the Appellant. The TPL is billing as per actual reading of the new meter installed by TPL to the Appellant.



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7. The status of the outstanding dues over time is as follows :-


Opening Arrears in Feb. 2001	Amount Paid by the Appellant as shown in Table 3		Arrears of MSEDCL in Dec. 2006 as per bill (Rs.)	MSEDCL Dues at the time of Handing Over i.e. 2007			Live Arrears of MSEDCL in OCT. 2023 (Rs.)	MSEDCL Dues on Sep. 2024		
	(Rs.)	Rs.		Period	Principal Amount (Rs.)	Interest (Rs.)		Total (Rs.)	Principal Amount (Rs.)	Interest (Rs.)
13620/-	2,05,560/-	From Feb.'21 to Dec.'06	1,47,340/-	1,18,710/-	42,630/-	1,61,340/-	Rs. 4,36,226/- in Oct. 2023	Nil	3,47,233/-	3,47,233/-
								Rs. 95,000/- paid on 29/01/2024		
Note	These figures are indicative in nature for the purpose of understanding.									

The Appellant paid Rs. 95,000/- on 29/01/2024 towards the outstanding principal amount. The interest amount of Rs. 3,47,233/- is to be paid yet. The Respondent TPL has released the demanded additional load of the Appellant, and has also changed the tariff category from industrial to power loom, with an undertaking that the Appellant will paid the balance amount in due course. Having once made a commitment before the Forum to pay the balance interest amount in installments, the Appellant cannot now back down from this payment obligation.

8. The consumption pattern of the Appellant in the TPL period for the initial five years (taken from TPL record) is tabulated as below:-

Year	Monthly Unit wise consumption of Service No. 14362351325												Avg/ Month
	Jan	Feb	March	April	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2007-08	2264	3132	2005	2713	2796	3037	3037	2188	4258	3761	6055	4453	3308
2008-09	4057	3947	4337	3868	3636	4789	4360	4043	3231	2869	2084	1571	3566
2009-10	2544	2615	2466	1709	2150	2319	2275	1896	1437	2314	2810	2214	2229
2010-11	2357	2039	2140	2426	2540	2461	2627	3292	2239	2192	3658	3020	2583
2011-12	3449	4117	3666	3587	3419	2695	3342	3577	4099	4676	3325	2071	3502

The average consumption for these five years varies from 2229 to 3566 units per month. This average consumption is more than the MSEDCL's billing of average consumption of 2156 units per month as shown in Table 2 for the earlier period from Feb. 2003 to Jan. 2007. After all these years there can no valid ground to question this recorded consumption.


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9. The following issues are framed to address the points raised: -

- Issue No. 1: Are the outstanding dues of then MSEB recoverable in toto?

Section 56(2) of the Electricity Act 2003 provides that:-

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

The Larger Bench Judgment dated 12.03.2019 of the Hon'ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions has interpreted Section 56 (2) of the Act. Electricity supply was continuously used by the Appellant during the MSEB period. A meter was provided for recording the consumption. The bills were raised by the then MSEB on a month-to-month basis. These bills included two parts:

A) Current monthly bill

B) Previous accumulated arrears

The Appellant did not pay the accumulated bills of arrears within time, which resulted in accumulation of outstanding dues of the consumer. TPL then took over the area under a Franchisee agreement. The TPL has also continuously shown these outstanding dues in each monthly bill. Since the Appellant failed to pay MSEDCL dues, interest was applicable to these live arrears which resulted in progressively increasing accumulated outstanding dues, which are being continuously shown in the monthly bills. We hold that TPL has the legal right to recover this amount. Hence, Issue No. 1 is answered in the **Affirmative**.



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At the same time, nothing bars the state government / MSEDCL to adopt a suitable policy for waiver or reduction of accumulated interest.

- Issue No. 2: When did the cause of action arise; is it continuous, and whether the grievance is time barred?

The Appellant argues that the cause of action is continuous from 2007 till the grievance was raised, hence there is no limitation. Records show that TPL took over all the distribution network records of this area in the year 2007 as a franchise of MSEDCL. These records included the records of the Appellant showing accumulated arrears along with the current monthly bills. The Appellant has not disputed the fact that TPL continued to issue the monthly bills along with the previous accumulated arrears right from 2007 onwards. Thus, the Appellant was fully aware of the arrears which he did not dispute in the Grievance Redressal Mechanism. Admittedly, these dues are being continuously shown in the monthly bills right from 2007. The Appellant pays only the current bills, if at all, but neglects to pay the accumulated outstanding dues of MSEB / MSEDCL right from the year 2007 on the alleged grounds that these dues are partly fictitious in nature. MSEDCL has clarified that system-generated disconnection notices were automatically issued from time to time; however, it is not possible to produce the old records today. **The Nodal Officer, Bhiwandi was also issuing individual notices to consumers having MSEDCL arrears from 2007. Now it is very difficult to trace the notice to a particular consumer. There was a mechanism available for bill correction at the Nodal Office since 2007. The Appellant could have approached the office, and the bill would have been rectified, if necessary, at that time itself.** We, thus, hold that the cause of action arose specifically from 2001 to 2007 and cannot be held to be “continuous” for the purpose of condonation of delay. We note that the Appellant approached the Forum on 28/11/2023. The present case does not fit the regulatory framework as envisaged under Regulation 6.6/7.8 of CGRF & EO Regulations 2006



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/ 2020 respectively, as the period of relief is not within the limit of two years prior to date of filing the application with the Forum i.e., 28/11/2023. The said Regulation is quoted below:

“The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”


Issue no.2 is answered accordingly.

10. The Appellant has cited various Judgments in support of its argument for ‘continuous’ cause of action. However, the ratio of these Judgments are not applicable in the instant case. In view of the above, we are of the considered view that the Forum has rightly decided the case in view of Regulation 6.6. Therefore, there is no need to interfere with the order of the Forum.

11. However, in the interest of fast recovery and reaching a settlement, MSEDCL is advised to design a special scheme for part waiver of interest in all such cases.

12. The instant Representation is disposed of accordingly.

Sd/-
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

