

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 122 OF 2024

In the matter of under billing and defective meter

Mr. Vincent Rego (User).....Appellant
(Original Consumer: Mahadeo Chintaman Patil) (Cons.No.000226264523)

V/s.

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

Appearances:

Appellant : 1. Vincent Rego, Consumer
2. Suraj Chakraborty, Representative

Respondent: 1. Siddharth Bansode, Executive Engineer, Vashi
2. Sanjay Pol, Addl. Ex. Engineer, Koparkhairane Sub.-Dn.
3. Rajiv Waman, Asst. Law Officer, Vashi

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 27th September 2024

Date of Order: 21st October 2024

ORDER

This Representation was filed on 27th June 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &



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Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 24th June 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum). The operative part of the order is as below:

“The grievance filed by the Appellant is dismissed with a cost of Rs.2000/- imposed on Mr. Vincent Dominik Rego for forged signing as Mr. Mahadeo Chintaman Patil.”


2. The Appellant has filed this representation against the order of the Forum. A physical / online hearing through video conferencing was held on 27th September 2024. Both the parties were heard at length. The Respondent filed its reply dated 29th August 2024. The Respondent’s submissions and arguments are as below. *[The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ where needed.]*

- (i) The Appellant is a commercial consumer (No.000226264523) from 22/03/2005. The connection details, inspection date, period, amount of assessment etc. is tabulated as below:

Table 1:

Name of Consumer	Consumer No.	Address	Sanct. Load	Date of Supply	Purpose	Date of Inspection	Assessment (Rs.)	Period of Assessment
Vincent Rego (Original Consumer: Mahadeo Chintaman Patil)	000226264523	Plot No. 94, Sector 1 A, Koperkhairne	9 KW	22/03/2005	Commercial (lodging & Boarding)	03-12-2024	Rs. 3,91,599/- for 34549 units as meter found 40.41 % under recording	Nov. 2020 to Feb. 2024

- (ii) There was a special hint (*Khabare*) by a telephonic call from an unknown person that the meter of the said premises had been skill-fully tampered with to record less consumption. Accordingly, the Addl. Executive Engineer of Flying Squad Panel Unit of the Respondent inspected the premises of the Appellant on 12/03/2024 in the


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presence of the occupier. During inspection the seals of the meter were found suspected. The current and voltage parameters of the installation found during the spot inspection are tabulated as below:

Table 2

Current & Voltage Measurement	R Phase	Y Phase	B Phase
Current measured at incoming Supply (A)	28	4.9	9.9
Current on Meter Display (A)	28	4.9	9.9
Voltage measured at incoming supply (V)	233	236	224
Voltage on Meter Display (V)	0	236	224

Since there was 28 Amp. current in R phase, it was surprising that R phase voltage on the meter display was missing. There was comparatively less current in Y & B phase as tabulated above. The meter of the Appellant was tested by portable Accucheck on site. The meter was found to be under-recording by 40.41%. A Panchnama of the electric installation and site was carried out from about 14.30 hrs. to 17.00 hrs. on 12/03/2024 in the presence of the Representative of the Appellant and two witnesses for protection of evidence. The meter was taken into custody of the Respondent for further analysing the possibility of internal tampering of the meter, with due care of joint sealing of the meter.

- (iii) The said meter was opened in the presence of the Appellant on 14/03/2024. In the preliminary observation, the capacitor of C8 terminal of printed circuit board was found burnt. Prima facie, it was difficult to prove theft. Hence, both the parties verbally decided to bill the consumer on plain assessment as per Data of MDAS (Metering and Data Acquisition System) of the meter for the period from missing

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of “R Phase” Voltage. The data of MDAS report was analysed and it was found that “R Phase” Voltage was missing from 01/11/2020 (R- 153225 KWH) to 12/03/2024 (R-203410 KWH). The recorded consumption during this period of about 3 years and 4 months was found to be 50185 units. The Appellant was assessed for Rs.3,91,599.34 for 34032 units, considering that the meter was under-recording by 40.41 %.

(iv) The Respondent has analysed the consumption pattern in five spans:-

- Recorded consumption prior to “R Phase” Voltage was missing
- Recorded consumption when “R Phase” Voltage was missing
- Assessed consumption when “R Phase” Voltage was missing
- Recorded & Assessed consumption when “R Phase” Voltage was missing
- Consumption after restoration of “R Phase” Voltage with normal conditions.

The same are tabulated as below: -

Table 3:

Sr. No.	Period	Months	Total Consumption (Units)	Average monthly consumption (Units)
1	Apr.2019 to Oct.2020 (Actual)	19	49814	2622
2	Nov.2020 to Feb.2024 (Under Recorded)	40	50185	1255
3	Nov.2020 to Feb.2024 (Assessed)	40	34032	851
4	Nov.2020 to Feb.2024 (Recorded + Assessed)	40	84217	2105
5	Mar.2024 to Aug. 2024 (Actual)	6	2229	3704

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From the above, it is clear that the Appellant was under billed by 40.41 % from Nov.2020 to Feb.2024. The Respondent has reasonably billed towards under billing to avoid the complexity of a suspected theft case.

- (v) The Appellant claimed that this case comes under Regulation 16.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021(the Supply Code and SOP Regulations 2021). This is an afterthought. The Appellant did not approach this authority with clean hands. This is not a case of a defective meter, but it is a special type of settlement.
- (vi) 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 to this case.

The relevant part of the Judgment is quoted below:

“33. It is, therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. An under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R, Y and 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 consumer 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 consumer, 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.”

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- (vii) The Respondent cited the Judgment of the Supreme Court dated 05/10/2021 in Civil Appeal No. 7235 of 2009 in M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. where retrospective recovery is allowed beyond two years in case of escaped billing. The Section 56(2) of the Act of two-year limitation would not arise in case in hand, and MSEDCL is entitled to recover the entire assessment of Rs. 3,91,599/- for 40 months. The present case is a clear case of escaped billing. The court has clearly differentiated between application of Section 56 (2) of the Act for “escaped assessment” versus “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 limitation provided under Section 56(2) will not be applicable for “escaped billing” due to a bona-fide mistake.
- (viii) The Respondent relies upon the order passed by the Hon’ble Electricity Ombudsman in its order dated 12.01.2023 in Rep. No. 176 of 2022, in Case of M/s. Ansukh Polymers Pvt. Ltd. Vs. MSEDCL where it has allowed the recovery of three years towards escaped billing.
- (ix) The existing old meter No. 76-21545967 was replaced with a new meter No. 76-09574537 in the month of March 2024. As such the grievance was totally resolved and nothing survives in the present grievance.
- (x) The Forum by its order dated 24.06.2024 considered all issues and passed a reasoned order.
- (xi) In view of the above, the Respondent prays that the Representation of the Appellant be rejected being not maintainable and filed without any merit.

3. The Appellant’s submissions and arguments are stated as follows: -

- (i) The Appellant-user/occupier/beneficiary, Vincent Dominik Rego has filed this representation. He is a tenant of late Mahadeo Chintaman Patil who expired on


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22/09/2020. Thereafter a Leave and License agreement was executed between the successors of Late Mahadeo Chintaman Patil & Vincent Dominik Rego which is kept on record. The tenancy agreement was registered from time to time. The Appellant runs lodging & boarding from the year 2005 having a valid license from the government authority. The Appellant was billed under the commercial tariff category. The details of the consumer are tabulated in Table 1. The Appellant is regular in payment of electricity bills. The meter is read every month by the MSEDCL officials.

- (ii) On 12.03.2024, MSEDCL officials inspected the electric installation on site and alleged that the meter was working slowly and the R-phase voltage to the meter was missing hence the meter was running 33.33 % slow. The meter was not tested in a Meter Testing Laboratory. The Respondent tested the said meter by Accucheck and assumed that the meter was under recording by 40.41 %.
- (iii) The meter was removed and taken in custody by applying seals, because of a doubt of the meter running slow. The Respondent installed a new meter in place of this meter. When the meter was opened in the presence of the consumer on 14/03/2024, it was found that one wire was burnt. This clearly shows that the meter was faulty.
- (iv) The Appellant received a supplementary bill of plain recovery for Rs. 3,91,599/- of 34549 units for the period from Nov. 2020 to Feb. 2024 towards slowness of the meter. The said assessment was added in the bill of April 2024.
- (v) The Appellant filed a grievance application with the Forum on 29/05/2024, which basically rejected the grievance. The Forum failed to understand that the Appellant is an occupier and deemed consumer and authorized to sign the Schedule A. The Appellant submitted the tenancy agreement; however, the Forum was prejudiced against the Appellant.

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- (vi) The Appellant claims that this case comes under Regulation 16.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021(the Supply Code and SOP 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."

- (vii) The Respondent violated the Section 56 (2) of the Electricity Act, 2003 (the Act) by giving 40 months' assessment bill. This is a clear case of extortion and unnecessary harassment of innocent consumers by MSEDCL.
- (viii) In view of the above, the Appellant prays that the Respondent be directed
1. to set aside the supplementary bill of Rs. 3,91,599/-.
 2. to revise the bill as per Regulation 16.4.1 of Supply Code and SOP Regulations 2021.
 3. to waive of interest and delayed payment charges levied if any.

Analysis and Ruling

4. Heard the parties and perused the documents on record. The activity of the Appellant is lodging and boarding. The details of the connection, date of inspection, retrospective recovery & period of recovery are tabulated in Table 1.


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5. The Respondent contended that it received an anonymous telephonic call from an unknown person (*khabare*) that the meter of the said premises had been skill-fully tampered with to record less consumption. When the installation of the Appellant was inspected on 12/3/2024, it was observed that “R Phase Voltage” was missing on the meter display, and hence the meter was working only on Y & B Phase. There was 28 A current in R phase where R phase voltage on the meter display was missing. There was comparatively less current in Y & B phase as tabulated in Table 2. The meter of the Appellant was tested by portable Accucheck on site. The meter found 40.41 % under recording. This is nothing but systematic planning and hence the Appellant did not come before this authority with clean hands. The “R Phase Voltage” of the meter was found missing for the period from 01/11/2020 to 12/03/2024 (3 years and 4 months) as per data of MDAS System. Accordingly, the Respondent issued a supplementary bill of plain recovery for Rs. 3,91,599/- of 34549 units towards under recording of consumption for the above period. The supplementary bill was added in the bill of April 2024.

6. The Appellant contended that the meter was defective and the Appellant is entitled to be billed only for three months as per Regulation 16.4.1 of Supply Code and SOP Regulations 2021.

7. The important abstracts of the Consumer Personal Ledger of the Consumer are charted below (as prepared by the Ombudsman office).

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Year	2019-20				2020-21			
Month	Previous Reading in CPL (KWH)	Current Reading in CPL (KWH)	Cons. (Units)	Meter Status	Previous Reading in CPL (KWH)	Current Reading in CPL (KWH)	Cons. (Units)	Meter Status
Apr	113731	117669	3938	Normal	145399	145399	165	R.N.T.
May	117669	123030	5361	Normal	145399	145399	97	R.N.T.
Jun	123030	129607	6577	Normal	145399	148613	3214	Normal
Jul	129607	129607	5292	R.N.T.	148613	149521	908	Normal
Aug	129607	129607	5292	R.N.T.	149521	150698	1177	Normal
Sep	129607	137992	8385	Normal	150698	151661	963	Normal
Oct	137992	139719	1727	Normal	151661	152699	1038	Normal
Nov	139719	141210	1491	Normal	152699	153756	1057	Normal
Dec	141210	142488	1278	Normal	153756	154821	1065	Normal
Jan	142488	143425	937	Normal	154821	155679	858	Normal
Feb	143425	144227	802	Normal	155679	155679	993	R.N.T.
Mar	144227	145399	1172	Normal	155679	157733	2054	Normal
	Total		31668		Total		12334	12334
	Avg/mth		2639		Avg/mth		1028	1028
Year	2021-22				2022-23			
Month	Previous Reading in CPL (KWH)	Current Reading in CPL (KWH)	Cons. (Units)	Meter Status	Previous Reading in CPL (KWH)	Current Reading in CPL (KWH)	Cons. (Units)	Meter Status
Apr	157733	157733	1326	Locked	171156	172502	1346	Normal
May	157733	160332	2599	Normal	172502	174129	1627	Normal
Jun	160332	160332	1551	Locked	174129	175741	1612	Normal
Jul	160332	162752	2420	Normal	175741	176843	1102	Normal
Aug	162752	164189	1437	Normal	176843	177952	1109	Normal
Sep	164189	165288	1099	Normal	177952	179022	1070	Normal
Oct	165288	166530	1242	Normal	179022	180168	1146	Normal
Nov	166530	167695	1165	Normal	180168	181257	1089	Normal
Dec	167695	168924	1229	Normal	181257	182314	1057	Normal
Jan	168924	169707	783	Normal	182314	183210	896	Normal
Feb	169707	170274	567	Normal	183210	184097	887	Normal
Mar	170274	171156	882	Normal	184097	185397	1300	Normal
	Total		16300		Total		14241	
	Avg/mth		1358		Avg/mth		1187	
Year	2023-24				2023-24			
Month	Previous Reading in CPL (KWH)	Current Reading in CPL (KWH)	Cons. (Units)	Meter Status	Previous Reading in CPL (KWH)	Current Reading in CPL (KWH)	Cons. (Units)	Meter Status
Apr	185397	186851	1454	Normal	0	4043	4043	Normal
May	186851	188707	1856	Normal	4043	8653	4610	Normal
Jun	188707	190957	2250	Normal	8653	13622	4969	Normal
Jul	190957	192417	1460	Normal	13622	16809	3187	Normal
Aug	192417	193707	1290	Normal	16809	19629	2820	Normal
Sep	193707	195257	1550	Normal				
Oct	195257	196881	1624	Normal				
Nov	196881	198761	1880	Normal				
Dec	198761	200037	1276	Normal				
Jan	200037	201241	1204	Normal				
Feb	201241	202367	1126	Normal				
Mar	202367	202367	1340	Replace				
	Total		18310		Total		19629	
	Avg/mth		1526		Avg/mth		3925.8	

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A study of this data shows that prior to Oct. 2019, monthly consumption was in the range of 3000 to 8000 units. Thereafter it dipped suddenly (from 8385 units in Sept. 2019 to 1727 units in Oct. 2019) and was in the range of 1000 to 2000 units till March 2024 when the meter was replaced. After that the monthly consumption pattern again increased to 3000 to 4000 units. There is no explanation for such a drastic change. This indicates the possibility of tampering; however, there is no direct proof.

The data does clearly establish that the consumption pattern was less by at least 40.41%, if not more, for the period from Oct.2019 to Feb. 2024 i.e. about 4 and half years.

8. We have examined the issue of whether this meter can be considered as defective or not. In this specific case, the Appellant did not come with clean hands before this authority, and hence we hold that he is not entitled to get the benefit of Regulation 16.4.1 of Supply Code & SOP Regulations 2021.

9. We note that it is very difficult for the Respondent to prove tampering / leading to missing of one phase voltage, especially of a whole current meter. The Appellant was enjoying three phase power supply for years; however, the recording was only for two phases. The MDAS data gives complete information of events, which is universally used for assessment. If an unknown person had not informed about this pilferage of energy, the Appellant would have continued to enjoy a low electricity bill for further years together, and tried to hide behind the shelter of “defective meter” or Regulation 16.4.1 of Supply Code & SOP Regulations 2021. The philosophy behind making Regulation 16.4.1 by the Commission is that a faulty meter should be replaced within a period of three months and the affected consumer should be billed on average basis for three months, and thereafter with actual billing with “Normal” Status.

10. At the same time, the Respondent also failed in its duty to regularly analyse MRI data of the consumer. Had it analysed the MRI / MDAS data earlier, it would have detected the

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missing phase voltage much earlier. It is expected that important 3 phase consumers should be inspected at least once every 2 years; their MRI data should be checked more frequently. In this case, by the Respondent's own admission, the missing R Phase voltage was allowed to go undetected for at least 40 months. This is a deficiency in service. Hence, the recovery period is restricted to 24 months, considering the Respondent's deficiency in service as per Section 56(2) of the Act. The Section 56 (2) 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.

11. In order to avoid such deficiency in future, the Respondent is advised to develop a mechanism for regular checking of important commercial consumers within some specific period.

12. Considering the various angles in the case, the Forum's order is set aside. The Respondent is directed:

- a) to issue a revised supplementary bill for 24 months retrospectively for the period from Mar. 2022 to Feb. 2024, considering under recording by 40.41%, and to waive off the interest and DPC from Apr. 2024 onwards if any, till the date of this order.
- b) to allow the Appellant to pay the revised bill in 3 equal monthly instalments without any interest and DPC. If the Appellant fails to pay any instalment, proportionate


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interest will accrue on defaulter portion, and the Respondent has the liberty to take action as per law.

- c) Compliance to be submitted within two months from the date of issue of this order.
- d) The other prayers of the Appellant are rejected.

13. The sanctioned load of the Appellant is 9 KW. The building is ground + four storied having 16 rooms with Air Conditioning for lodging and boarding. It is advised to check the connected load and advise the consumer to regularize the load to avoid irregularities in future.

14. The Representation is disposed of accordingly.

15. 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)



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