

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 100 OF 2024

In the matter of payment of bill through cheque and penalty thereof

A. R. HemrajaniAppellant
(Con. No. 000090976460)

V/s.

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

Appearances:

Appellant : A. R. Hemrajani

Respondent: 1. Rajesh J. Thool, Executive Engineer, Mulund
2. Sanjay Borkar, Addl. Executive Engineer, Sarvodaya Sub-Dn.
3. Atul P. Deshmukh, Dy. Manager

Coram: Vandana Krishna (Retd. IAS)

Date of hearing: 21st June 2024

Date of Order : 28th June 2024

ORDER

This Representation was filed on 28th May 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 24th April 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum). The Forum dismissed the grievance application of the Appellant.

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2. The Appellant has filed this representation against the order of the Forum. A physical hearing was held on 21st June 2024. Both parties were heard at length. The Appellant's submissions and arguments are stated as below: *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' in brackets where needed.]*

- (i) The Appellant is a LT 3 phase residential consumer (No. 000090976460) since 16.07.2016 with Sanctioned Load of 7 KW at Flat No. 801, Alag Air Meghna Bldg., Devidayal Nagar, Mulund (West).
- (ii) The Appellant paid the bill of January 2024 by cheque on 27.01.2024 (Saturday) and the receipt of payment was received on the same day. The last due date of payment of this bill was 29.01.2024 (Monday). However, the Respondent gave the credit on 31/01/2024, and accordingly delay payment charges amounting to Rs.34.35 were levied in the next bill, as the payment was allegedly made after the due date of 29.01.2024. *[Note: The payment was made through cheque on a bank holiday (Saturday) 2 days before the due date, however there were bank holidays on 27th and 28th Jan., Saturday & Sunday.]*
- (iii) The Appellant referred to the order given by the Maharashtra State Consumer Dispute Redressal Commission, Circuit Bench at Aurangabad in First Appeal No. 633 of 2014 in Complaint Case No. 56 of 2014 of District Consumer Forum Nanded, wherein the said Commission stated that - The opponent wrongly claimed delay charges despite accepting the amount of bill by cheque before expiry of the due date. The Forum upheld that **the date of presenting the cheque is the date of payment.**
- (iv) The Appellant filed a grievance in the Forum on 26.02.2024. The Forum by its order dated 24.04.2024 dismissed the grievance application. The Forum failed to understand the basic issue that the cheque is a negotiable instrument that contains an unconditional order to the bank to pay a certain sum mentioned in the instrument, from the drawer's account to the person to whom it is issued, or to the account of the specified person or the bearer.
- (v) The Appellant by his rejoinder dated 21/05/2024 stated that in Case of Commissioner of Income Tax, Bombay V/s Ogle Glass Work Ltd. [1954 AIR 429] the Supreme Court had considered

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what should be considered as the date of payment when a cheque is issued. The Supreme Court concluded that even if a cheque is accepted conditionally, i.e. subject to realisation, the legal position would be that the date of payment would relate back to the date when the cheque was issued and not when it was encashed or credited to the account. *[Note: The Appellant did not put on record the copy of the said Supreme Court Judgement.]*

- (vi) It is important to know the law so that consumers do not get misled. The authoritative interpretation of the law by the Supreme Court will help consumers to assert their right in case service providers attempt to misinterpret it against consumers' interest.
- (vii) The Appellant prays that MSEDCL be directed to follow the judgment of the Maharashtra State Consumer Dispute Redressal Commission and not to claim delay charges if payment is made by cheque before expiry of the due date.

3. The Respondent has filed its reply dated 12th June 2024. Its submissions and arguments are stated as follows: -

- (i) The Appellant is the consumer whose details are already stated in para 2 (i). A bill of Rs.2740/- was generated in the month of Jan 2024, indicating Prompt Payment Date as 18.01.2024, and Rs 2760/- indicating Due Date as 29.01.2024. *[Note: The billing period was 04.12.2023 to 04.01.2024. As explained in the hearing, different and staggered due dates are generated for different consumers by the software.]*
- (ii) The Appellant paid this bill on 27.01.2024 by cheque, and the amount was realized with B60 report of the said consumer generated on 31.01.2024 as payment (considering 27.01.2024 & 28.01.2024 as Bank Holidays being the fourth Saturday & Sunday. Hence, the credit of cheque amount was given on 31/01/2024. It is notable that the consumer deposited the cheque on 27th Jan. knowing that it was a Saturday and a bank holiday.
- (iii) The Appellant was levied "Delayed Payment Charges of Rs. 34.35" in the month of Feb. 2024 by the system as per the computerized programme which is based on the Tariff Order in force.



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- (iv) As per the Respondent, the consumer has been correctly billed. In support, the Respondent referred to the Commercial Circular 341 dated 28.04.2023 of Corporate Office. The contents of the commercial circular are reproduced as below:

“In case the electricity bill is not paid within the due date mentioned on the bill, delayed payment charges on the billed amount shall be levied on the billed amount for the first month of delay.”

- (v) The Appellant cited the Regulation 16.5.6 of MERC (Electricity Supply Code and Standard of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (the Supply Code and SOP Regulations 2021 in support of its submissions.

*“16.5.6. Consumer may pay the bill by Cash, Cheque, Demand Draft, Money Order or through electronic modes. **The date of realisation of cheque or Three (3) days from the submission of cheque shall be deemed to be the date of receipt of the payment provided that the cheque is not dishonoured:***

Provided that if cheque of a Consumer dishonoured for Two (2) occasions in any Financial Year, then such Consumer shall not have facility of paying electricity bill through cheque for balance period of Financial Year:

Provided further that cash payment limit for each monthly bill shall not exceed Rs 5,000/- or as may be decided by the Commission from time to time in the tariff order.”

- (vi) The Commission has issued these orders after taking into consideration all aspects of cheque payments and clearance issues. The Appellant is a retired Executive Engineer of the erstwhile MSEB (MSEDCL). The Appellant is fully aware of the process of the Commission in forming Regulations after public hearings and suggestions thereafter.
- (vii) A separate Consumer Grievance Redressal Mechanism is established under the Electricity Act, 2003 and at present, CGRF & EO Regulations 2020 is in force. This mechanism is for basically addressing individual grievances as defined in the definition of ‘Grievance’ in Regulation 2.1 (e) of CGRF & EO Regulations 2020. This grievance mechanism is not

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meant for policy decisions. The individual complaint of the Appellant is already addressed by the Respondent. **However, the Appellant is praying for a policy matter regarding payment done by submission of cheque, or cheque realisation date, which comes under the competency of the Commission and not the Electricity Ombudsman.**

(viii) The Respondent produced the instructions printed in the bill as follows: -

“Instructions for Cheque payment:

*4) Cheque should be a/c payee only. Cheque should be payable in name of 'MSEDCL', and issued by local bank. Please attach bill with the Cheque and do not staple them. Post-dated cheque will be not accepted. **If amount is paid by Cheque/DD, the date on which amount deposited in 'MSEDCL' bank account will consider as a bill payment date.***

5) While putting cheque in collection drop box, please mention consumer number (along with PC and BU) on the backside of the cheque. Pl mention cheque details on the backside of receipt stub.

6) As per negotiable instrument act 1981 article 138, cheque bounce is a punishable offence and liable for legal action.

7) As per MERC order for Case No 322 of 2019 revised Cheque Bounce charges of Rs. 750 plus GST or Bank charges whichever is higher will be applicable from 01 April 2020.”

(ix) The Respondent stated that subsequently they have modified their software in accordance with Regulation 16.5.6. The validation report B60 is generated considering three days' mandatory provision, even if the Respondent MSEDCL fails to deposit the cheque in the bank in time. In other words, as per Regulation 16.5.6, even if a cheque is not cleared (i.e. deposited in MSEDCL bank account) within 3 days, the benefit of cheque clearing is still given to the consumer on the third day. Normally, two days is required for clearing a cheque, if the cheque is presented in time with the bank, considering the bank clearing schedule defined by the bank which is in line with the directions of Reserve Bank of India.

(x) These instructions for Cheque Payment are totally in line with the Tariff Order of the Commission dated 30/03/2020 in Case No. 322 of 2019. Some of the Cash Collection Centres work odd hours during night-time in the interest of consumers. Naturally, cheques

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Electricity Ombudsman Mumbai




received on odd hours will be presented for clearing to the bank generally on the next working day. The banks do not give any credit to the Respondent against these deposited cheques, unless and until they are fully cleared in the clearing system. This period is normally two days. The Commission has made a provision of three days, which is in line with RBI/Bank Clearing policy. **This was explained many times to the Appellant and he was requested to make the bill payment at least three days in advance of the last date of bill payment.** However, he makes payments many times on these critical days which create further grievance. *[Note: During the hearing, the Appellant demanded that for such situations like intervening bank holidays, the Respondent should actually advance the last due date by 3 days. In this case, for example, instead of fixing the due date as 29.01.2024 (Monday), it could be fixed as 26.01.2024 (Wednesday). This will ensure that even if a cheque payment is made on 26.01.2024, the cheque gets cleared latest by 29.01.2024, the 'intended' last date for payment.]*

- (xi) The Respondent clarified that about 70 % consumers in urban pockets are now paying bills through digital banking like IMPS, NEFT, RTGS etc. About 20 % consumers pay bills by cash and about 10 % consumers pay the bill by cheque. Hence the problems / issues raised by the Appellant are very rare. The Respondent assured that required minor corrections in the instructions for cheque payment will be intimated to their corporate office for further needful action in the matter.
- (xii) The Forum by its order dated 24/04/2024 dismissed the grievance of the Appellant rightly. The order of the Forum is a reasoned and speaking one and hence no interference is required in the order of the Forum. Therefore, considering all the above facts, the Respondent prays that the representation of the Appellant be rejected.

Analysis and Ruling

4. Heard the parties and perused the documents on record. The Appellant is a residential consumer whose details are already stated in para 2 (i). The Appellant is a Senior Citizen and a Retired Executive Engineer of erstwhile MSEB, who is regular in payment of electric bills.


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5. The Appellant contended that he paid his January 2024 bill by submitting a cheque on 27.01.2024 (a Saturday), which was two days before the due date i.e. 29.01.2024. However, he has been charged delayed payment charges in the next billing cycle, by considering the date of payment as 31.01.2024 (the cheque realisation date). He states that the Respondent has given the required credit to him subsequently, but should change its policy. The National Consumer Disputes Redressal Commission has upheld in its various decisions that **the date of presenting of a cheque is the date of payment**, which has been referred to in the main submission of the Appellant. The wording used for cheque payment in the bill format is confusing, and needs to be redrafted for clarity in the perception of the consumers.

6. On the other hand, the Respondent contended that there were bank holidays on 27/01/2024 & 28/01/2024 (Saturday and Sunday) and it was not possible to send his cheque for clearing on those days. Even then, the Respondent has refunded this penalty in true spirit. The Commission has allowed three days for clearing of cheques to Licensees as per Regulation 16.5.6 Of Supply Code & SOP Regulations 2021. These Regulations are deemed statutes, and the Licensees are bound to follow them in toto.

7. We uphold the contention of the Respondent that finally it is MERC (the Commission) which is empowered to take decisions relating to cheque payments, due dates, clearance dates and such matters. It is necessary to refer the concerned Regulations of Supply Code & SOP Regulations 2021.

“16.5. Payment of Bills

16.5.1. The due date for the payment of a bill shall be mentioned on the bill and such due date shall be not less than Twenty-one (21) days from the bill date in the case of Low Tension Consumers, and not less than Fifteen (15) days in the case of other Consumers.



(Dilip Dumbre)
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Electricity Ombudsman Mumbai



16.5.2. Where the due date indicated for payment on the bill falls on a Sunday or a public holiday, the payment shall be due on the next day and no delayed payment charges shall be levied on payment made against the bill till that day.

16.5.6. Consumer may pay the bill by Cash, Cheque, Demand Draft, Money Order or through electronic modes. **The date of realisation of cheque or Three (3) days from the submission of cheque shall be deemed to be the date of receipt of the payment provided that the cheque is not dishonoured:**

Provided that if cheque of a Consumer dishonoured for Two (2) occasions in any Financial Year, then such Consumer shall not have facility of paying electricity bill through cheque for balance period of Financial Year:

Provided further that cash payment limit for each monthly bill shall not exceed Rs 5,000/- or as may be decided by the Commission from time to time in the tariff order.

16.5.7. The Distribution Licensee shall endeavour to provide various other modes of payment of bills / dues to its Consumers including but not limited to various electronic modes which may be available at the call centre or on a digital platform from time to time for the convenience of payment.

16.5.8. In addition to the mode of payments specified in Regulation 16.5.6 of this Code, the Distribution Licensee may notify schemes for acceptance of bill payment in a specified area and/or for a specified category of Consumers, after due notice is given to the Consumers.

16.5.9. The Distribution Licensee shall establish sufficient number of collection centres at suitable locations with necessary facilities where Consumer can deposit the bill amount with ease and without undue congestion.

16.5.10. The Consumer who neglects to pay his bill is liable for levy of delayed payment charges and interest on arrears in accordance with relevant orders of the Commission and/or appropriation of security deposit. A notice of disconnection to a Consumer under Section 56 of the Act shall be served in the manner provided for in Section 171 of the Act:

Provided that Distribution Licensee can serve notice under Section 56 of the Act through Digital Mode such as Whatsapp message, e-mail, SMS etc:

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Provided further that it shall be responsibility of Distribution Licensee to ensure the delivery of notice through Digital Mode and that communication is complete:

Provided that such notice may be served only where the Consumer neglects to pay any sum or any charge under Section 56 of the Act:

Provided further that such notice shall be served separately and shall not form part of the bill but the said separate notice can be attached/sent with the bill.

16.5.11. The Distribution Licensee may offer incentives to Consumers for making prompt or early payment of their bills, in accordance with the relevant orders of the Commission.

16.5.12. In case of pre-paid metering, the Licensee shall pay a rebate/incentive to the Consumer in accordance with the relevant orders of the Commission.”

Thus, the Commission has allowed maximum three days' time for clearing cheques on presenting to the Respondent, and they are following the same in toto. This authority has no powers to change policy decisions including the current matter.

8. The Reserve Bank of India has published FAQs on its Website. The concerned FAQ is reproduced as below:

1. What is the timeline for realization of local and outstation cheques and compensation payable if there are delays in affording credit?

“Local Cheques

Local cheques are payable within the jurisdiction of the clearing house and will be presented through the clearing system prevailing at the centre. Credit arising out of local cheques shall be given to the customer's account as indicated in the Cheque Collection Policy (CCP) of the concerned collecting bank.

Notwithstanding to the CCP of concerned collecting bank, ideally, in respect of local clearing, banks shall permit usage of the shadow credit afforded to the customers' accounts immediately after closure of the relative return clearing on the next working day or maximum within an hour of commencement of business on the third working day from the day of presentation in clearing, subject to usual safeguards.



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Under grid-based Cheque Truncation System (CTS) clearing, all cheques drawn on bank branches falling within in the grid jurisdiction are treated and cleared as local cheques. The grid clearing allows banks to present / receive cheques to/ from multiple cities to a single clearing house through their service branches in the grid location.

If there is any delay in credit, beyond the period specified above, customer is entitled to receive compensation at the rate specified in the CCP of the concerned collecting bank. In case, no rate is specified in the CCP for delay in realisation of local cheques, compensation at savings bank interest rate has to be paid for the corresponding period of delay.”

9. During the hearing, the Ombudsman made some suggestions to MSEDCL to correct and refine its instructions on the monthly bill regarding payment by cheque, as there are some grammatical mistakes, as well as basic mistakes in not incorporating the provision regarding maximum of 3 days for considering cheque clearance. The Respondent Mulund Division assured that they will follow up with their Corporate Office for refining the exact wording of instructions regarding cheque payments.

10. The model instructions are suggested as below:

Original Instructions:

*Cheque should be a/c payee only. Cheque should be payable in name of 'MSEDCL' and issued by local bank. Please attach bill with the Cheque and do not staple them. Post-dated cheque will be not accepted. If amount is paid by Cheque / DD, **the date on which amount deposited in 'MSEDCL' bank account will consider as a bill payment date.***

Modified Instructions suggested :-

If the amount is paid by cheque / DD, the date on which the amount gets cleared, or a maximum of 3 days from the date of depositing the cheque will be considered as the bill payment date.

11. In view of the above, the representation of the Appellant is rejected and disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)

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