

		Date	Month	Year
1	Date of Receipt	27	04	2023
2	Date of Registration	27	04	2023
3	Decided on	23	06	2023
4	Duration of proceeding	57 days		
5	Delay, if any.	—		

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,

BEST's Colaba Depot

Colaba, Mumbai - 400 001

Telephone No. 22799528

Grievance No.A-484-2023 dtd. 27/04/2023

Embassy Centre Premises Co-op.Soc.Ltd.

.....Complainant

V/S

B.E.S.&T. Undertaking

.....Respondent

Present

Chairman

Coram :

Shri S.A. Quazi, Chairman

Member

1. Smt. Anagha A. Acharekar, Independent Member
2. Smt. Manisha K. Daware, Technical Member

On behalf of the Respondent (1) : 1. Shri Sanjay P. Sontakke
2. Shri Sharad N. Pawar

On behalf of the Complainant : 1. Shri Prakash N. Gadkar

Date of Hearing : 07/06/2023

Date of Order : 23/06/2023



(Signature)
(Milind Karanjkar)
Secretary
CGRF BEST

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(Signature)

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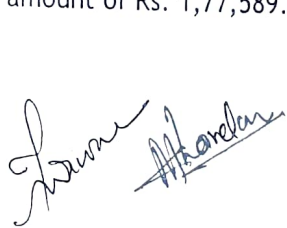
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Judgment

- 1.0 The grievance of the complainant is that the Respondent / Distribution Licensee has asked the complainant to pay an amount of Rs. 1,77,589.73 towards penalty and fixed charges as additional demand for the period from February 2010 - April 2022. The complainant has also grievance that the Respondent has already recovered an amount of Rs. 4 lacs from the complainant during the period from February 2010 to April 2022 illegally and when asked for refund thereof, the Respondent refused.
- 2.0 The following facts may be said to be not in dispute.
- a) The complainant is a Co-operative Society Ltd.. Since prior to February 2010 the Respondent has been providing electric supply to the premises of the complainant.
- b) Vide letter no. ECPC/20-21/BEST/150 dtd. 17/02/2022 the complainant society requested the High Value Consumer (HVC) Dept. of the Respondent for updation of Contract Demand (CD) and refund of alleged wrongly charged fixed charges in electricity bill of the complainant under consumer no. 102-029-505. The same letter was received at Customer Care 'A' ward of the Respondent. After checking consumer's recorded maximum demand and connected load, the connected load was rectified vide ID no. 507212 and consumer's a/c no. changed to 301-159-006 with sanction load as 13.12 kw and tariff category as LT-II(A). This was informed to the complainant's representative to follow up with HVC Dept. regarding his request for refund of wrongly charged contract demand penalty of the aforesaid a/c 102-029-505 as the said a/c no. pertains to HVC Dept.
- c) The letter dtd. 12/09/2022 was addressed by the complainant to the General Manager, BEST and received in HVC Dept. on 17/10/2022. In that letter the consumer demanded refund of wrongly charged fixed charges, contract demand penalty etc. in the a/c 102-029-505 from February 2010 to April 2022.
- d) Considering the aforesaid both the letters, the HVC Dept. of the Respondent informed the consumer by their letter dtd. 04/11/2022 that their case is under scrutiny. Then, by letter dtd. 21/11/2022 received in the HVC Dept. on 23/11/2022 again the consumer/complainant demanded refund for wrongly charged fixed charges, contract demand penalty etc. in the consumer a/c no. 102-029-505 from February 2010 to April 2022.
- e) In view of the above correspondence of the complainant, the HVC Dept. of the Respondent scrutinized the matter and amendment was carried out by them in the billing parameters for the period from February 2010 to April 2022 as per the aforesaid requests of the complainant by considering prevailing correct applicable tariff i.e. LT-II(A). After such scrutiny, the Respondent made demand for amount of Rs. 1,77,589.73




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in the month of February 2023. This was informed by the Respondent to the complainant vide its system generated letter dtd. 25/01/2023.

3.0 The case of the complainant may be stated as under:

- a) There were three electric meters i.e. L-841394, 0710302 and M-070555 installed in the premises of the complainant under the a/c no. 301-157-249 since the beginning. In January 2000, the Respondent removed one meter bearing no. L-841394 under the garb of combination of meters. In April 2002, the another meter bearing no. 0710302 was removed by the Respondent from the premises of the complainant. In January 2010, the sanctioned electric load of the complainant was less than 20 kw. However, the kwh units were more than 5000 units per month. Therefore, Respondent / BEST Undertaking changed the meter no. M070555 for the purpose of applying TOD tariff and in its place TOD meter no. P-082105 was installed at the site. At that time the a/c no. 301-157-249 was changed by the a/c no. 102-029-505 and the tariff category was changed from LT-II(A) to LT-II(B).
- b) In the year 2010, the Respondent has changed the meters for application of TOD tariff despite the fact that the sanctioned load was less than 20 kw. The said change of electric meter was not accidental but was under the scheme of the Respondent and meters of various other consumers were also changed for applying TOD tariff.
- c) There was an approved electric sanctioned load of 13.42 kw to the earlier a/c no. 301-157-249 of the consumer. However, when this consumer's account number was changed by new account number, the sanctioned load was being shown only 0.30 kw. In February 2010, the supply was being given under a/c no. 102-029-505 as per LT-II(B) and the billing was also done accordingly to the complainant. In respect of category LT-II(B) use of capacitor was compulsory and therefore by installing capacitor the complainant had been receiving incentive. In spite of the complainant's request in July 2010 and November 2013 for updation of the incorrect application of electric load, the Respondent never did it. In August 2014, the Respondent updated 13.12 kw load without any request from the complainant. In February 2010, the respondent had wrongly applied electric load and hence wrong contract demand has caused charging penalty for additional demand. This was stopped from August 2014. In April 2017, the Respondent changed the defective meter from the premises of the complainant and the Respondent started to demand the additional demand penalty in the electricity bills of the complainant. In January 2022, the Auditor of the complainant informed that the Respondent had been charging wrongly for fixed charges and additional demand penalty. According to the complainant, as per MERC guidelines, electric load divided by 0.8 should be the criteria for determining the contract demand. Meaning thereby the contract demand pertaining to the complainant should be 16.40 KVA if the sanctioned electric load 13.12 kw is divided by 0.8. Therefore, this may be determined and for this purpose the complainant made a




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request application dtd. 17/02/2022 to the Respondent and also sent various reminders. However, the Respondent did not take cognizance of this request for about one year. After one year of such request, the Respondent has considered the same. However, the ultimate decision of the Respondent is unjust. The Respondent has wrongly changed the meter no.P-170554 by the meter no N-209871 and has changed a/c no. 102-029-505 with 310-159-006 and also changed the tariff category illegally. According to the complainant, this has been done by the Respondent without giving an opportunity of hearing to the complainant and even without making any communication to the complainant in this regard. The Respondent has wrongly issued the letter dtd. 25/01/2023 alleging that the complainant is liable to pay the amount of Rs. 1,77,589.73 for the period from 01/01/2010 to 01/04/2022 by applying wrong tariff category.

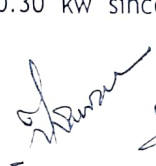
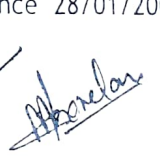

- d) According to the complainant, the Respondent has debited the aforesaid amount in the complainant's account by applying wrong tariff category as LT-II(B) instead of correct category LT-II(A). It is further case of the complainant that they did not make any complaint about application of the tariff category during the period from February 2010 to April 2022. The grievance of the complainant is only that wrong electric load and wrong contract demand has been applied to them from July 2010 to January 2022. This grievance was put to the Respondent by the complainant. From January 2010 till date, the officials of the Respondent had been changing the electric meters, electric load and tariff category as per their whims. Therefore the complainant is entitled to get the refund of Rs. 4 lacs from the Respondent on account of wrong application of additional demand penalty and fixed charges. Lastly the complainant has requested to this Forum that the Forum should issue direction to refund Rs. 4 lacs which the Respondent has recovered from the complainant illegally and also to direct the Respondent to modify the bills and to cancel their demand about Rs. 1,77,589.73.

4.0 The Respondent's two departments have given the reply jointly. This reply is signed by officials of the Customer Care (A) ward as well as High Value Consumer Department. The case of the Respondent may be stated as under :

- a) As per the available records of the complainant maintained with the Respondent, the complainant is Respondent's consumer since 1984. Their a/c no. was 301-157-249. The building of the complainant comprises of ground to top floors. As per their old meter information system, meter no. L-841394 was installed on 21/08/1984 which was removed on 10/11/1986 for the reason that it was tampered. Thereafter meter no. L-770754 and meter no. 0710302 were installed on 14/03/1987. Out of these meters, the meter no. 0710302 was removed on 28/01/2002 with no reason specified in the manual 913 advice. As per the records available with the Respondent, after removal of meter no. 0710302, the consumer's sanctioned load remained 0.30 kw. It seems that load is neither regularized by the party nor by the Respondent. Hence, since January 2002 sanctioned load remained 0.30 kw only. As per ledger history consumer was having meter no. L-770754 with sanctioned load 0.30 kw since 28/01/2002.




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Thereafter meter no. L-770754 was replaced by another meter bearing no. M-508718 on 28/11/2006. Again meter no. M508718 was replaced by meter no. M-070555 on 06/01/2008. Thereafter, meter no. M-070555 was removed on 02/01/2010 with reason "connection order" and new meter no. P-082105 was installed and old a/c no. 301-157-249 was changed to new a/c 102-029-505 on 02/01/2010 and as per the available record old Consumer Information System (CIS) and tariff was changed from LT-II(A) to LT-II(B).

- b) According to the Respondent's TOD compatible tariff meter no. P-082105 was installed under special drive on the basis of actual recorded consumption. At that time even actual sanctioned load was 13.42 kw i.e. below 20 kw. Accordingly power factor incentive and penalty for exceeding contract demand was levied immediately as, in billing system sanctioned load of the consumer was 0.30 kw only. Thereafter, meter no. P-082105 was replaced by P-170554 on 22/12/2017 for the reason of its being defective. Vide case reference no. 173444, load was corrected to 13.12 kw with contract demand as 16.40 KVA and same is effected in electric bill of September 2014 as per HVC Dept. vide note dtd. 29/05/2014 and accordingly from September 2014 penalty for exceeding contract demand has been stopped.
- c) As per the ledger it was noticed that consumer was again levied penalty of exceeding contract demand from the month of April 2017. As per the available record change of contract demand was not initiated by Customer Care (A) ward of the Respondent. Vide letter dtd. 17/02/2022 the complainant requested the HVC Dept. for updation of contract demand and refund of wrongly charged fixed charges in electricity bill of the aforesaid a/c 102-029-505. This letter was received in the Customer Care (A) ward. After checking consumer's recorded maximum demand and connected load the sanctioned load updated as 13.12 kw and tariff category changed from LT-II(B) to LT-II(A) and also account number changed to 301-159-006. This was informed to the complainant.
- d) Then on 12/09/2022, the complainant made the complaint and requested to refund the wrongly charged fixed charges, contract demand penalty etc. in consumer's a/c no. 102-029-505 from February 2010 to April 2022. Ultimately the Respondent's HVC Dept. finalized the dispute by concluding that the contract demand penalty amount Rs. 3,11,734.78 and power factor incentive of Rs. 4,19,630.90 and credit given for billing period from May 2020 to July 2022, regarding Covid period an amount of Rs. 61,460.63 was levied during the period from February 2010 to April 2022 has been reversed by preparing dr/cr note as per the document annexed by the Respondent with reply as Exhibit 'O'. Vide case reference no. 7867849, dr/cr note forwarded to Audit Dept. for further scrutiny. Finally an amount of Rs. 1,77,589.73 has been debited in the a/c no. 301-159-006 for wrongly applied tariff during the period from 01/01/2010 to 01/04/2022 in the billing month of February 2023 and same was informed to the consumer vide Respondent's letter dtd. 14/01/2023. After Audit




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verification the said amount of Rs. 1,77,589.73 has been debited in the bill of the complainant / consumer in February 2023.

- e) According to the Respondent, the aforesaid amendment has been carried out on the request of the complainant and in the course of scrutiny the said amount is found due against the complainant to the tune of Rs. 1,77,589.73, after all calculations as per the Respondent's dr/cr note reflected in their document annexed to the Respondent as Exhibit 'O'. Therefore the representative of the Respondent has submitted that the complainant's grievance has no basis and hence same may be rejected.

- 5.0 We have heard the submissions of parties and noted their submissions as above. In view of the above submissions of the parties and case pleaded by them, the following points arise for **determination**, on which we record our findings as under, for the reasons to follow.

Sr. No.	Points for determination	Findings
(1)	<p>Whether the complainant is entitled for directions to the Respondent</p> <p>a) to withdraw their demand of Rs. 1,77,589.73 and</p> <p>b) for refund of Rs. 4 lacs in respect of the billing pertaining to the period from February 2010 to April 2022 ?</p>	<p>a) The complainant is entitled for the directions from this Forum to the Respondent to withdraw their demand of Rs. 1,77,589.73, with liberty to the Respondent to demand only those dues of the charges, which are pertaining to the period within two years preceding the date on which the Respondent has corrected the tariff and contract demand.</p> <p>b) However, the complainant is not entitled for the directions from this forum to the Respondent to refund the amount of Rs. 4 lacs as claimed by the complainant in respect of the billing for the period from February 2010 to April 2022.</p>
(2)	<p>What order is required to be passed ?</p>	<p>The complaint deserves to be partly allowed as is being directed in operative order being passed below giving reasons.</p>



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6.0 We record reasons for aforesaid findings as under :

- a) As far as the request of the complainant to direct the Respondent to withdraw the demand of Rs. 1,77,589.73 in respect of the billing for the period from February 2010 to April 2022 is concerned it may be noted that the contention of the parties is that prior to February 2010 some changes were made by the Respondent in respect of the replacement of the meters and changed all tariff categories etc. According to the Respondent, the complainant had complained to the Respondent that the Respondent has recovered certain amount from the complainant during the period from February 2010 to April 2022 to the tune of Rs. 4 lacs wrongly. Such letter dtd. 17/02/2022 was received by the Respondent from the complainant. In the said letter, the complainant had requested to the Respondent for updation of contract demand and refund of wrongly charged fixed charges in electricity bills, then reminders were also sent on 25/07/2022 and 12/09/2022 in this regard. Again on 21/11/2022 and 29/12/2022 requests were made by the complainant. On such requests of the complainant, the Respondent made an enquiry and scrutiny of the said claim. Ultimately the Respondent has made certain calculations as mentioned by them in clause 20, 22 & 23 as noted herein earlier and in their submissions, in this regards the Respondent has relied on their calculation sheets mentioned in the Annexure 'O' to their reply. On perusal of these documents it appears that the Respondent has concluded that an amount of Rs. 79,39,795.25 was to be recovered from the complainant as per their record for the period from February 2010 to April 2022 and the complainant has paid to the Respondent during this period an amount of Rs. 77,62,205.52. The case of the Respondent is that this has been recalculated on the aforesaid request of the complainant and on such recalculation, the said figures of debit/credit have been found. On such recalculation it is revealed that during the disputed period from Feb. 2010 to April 2022, the amount payable by the complainant is Rs. 79,39,795.25 and the actual amount paid by the complainant is Rs. 77,62,205.52. After deduction of the actual paid amount of Rs. 77,62,205.52 from amount actual payable amount of Rs. 79,39,795.25 the difference would be the remaining payable amount. On such calculation, the remaining payable amount comes to Rs. 1,77,589.73. Therefore, the Respondent's case is that actually the complainant is liable to pay this amount of Rs. 1,77,589.73 and this has been added in the bills of the complainant in the month of February 2023. Therefore, the Respondent says that the complainant's request to give directions to the Respondent to withdraw this demand is not legal and valid. On the other hand, the complainant's representative has submitted that the Respondent cannot recalculate in the aforesaid manner and cannot demand the complainant to pay the said amount of Rs. 1,77,589.73 after a period of 10-12 years.
- b) We have examined the said facts and submissions of the parties and on examination as such, we find that the aforesaid demand of the Respondent for Rs. 1,77,589.73 is made in the month of February 2023 but that amount is pertaining to the period from




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February 2010 to April 2022. The said demand is hit by the provision of Section 56 (2) of the Electricity Act 2003. In this section it is provided that,

"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 electricity."

In view of this provision, the demand for the amount pertaining to the period from February 2010 to April 2022 cannot be said to be legal as the aforesaid provision say that the Distribution Licensee cannot recover the dues for the period beyond two years. Hence, it is necessary that the Respondent should be directed to modify the bill and to withdraw that demand with a liberty to the Respondent to charge only that amount which is pertaining to the period within two years preceding the date on which the Respondent has corrected the tariff and contract demand. Thus, the Respondent cannot ask the complainant to pay the arrears for the period from February 2010 to April 2022, except the dues pertaining to the period within two years preceding the date on which the Respondent has corrected the tariff and contract demand. Thus it is necessary that the respondent should be directed by this forum to withdraw the demand made as such for the dues which are hit by the provisions of the prescribed limitation referred to u/s 56 (2) of the Electricity Act. For this purpose the Respondent will have to be directed to modify their demand and bill. Hence in this regard the aforesaid findings have been recorded by us on sub-clause (b) of point number (1).

- c) As far as the claim of the complainant that he is entitled to get refund of Rs. 4 lacs illegally recovered by the Respondent for the period from February 2010 to April 2022 is concerned, it may be noted that the said request of the complainant is also barred by the limitation prescribed under the MERC (CGRF & EO) Regulations, 2020 under clause 7.8 which is provided as under :

"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."

- d) In view of the above said provisions we will have to see whether the aforesaid request made by the complainant to this Forum is within limitation of two years. The answer to this question is in negative. It may be noted that the period during which the complainant says he has been wrongly charged to the tune of Rs. 4 lacs is for the period from February 2010 to April 2022. He has filed the present complaint on 27/04/2023. Therefore, the request made by the complainant for refund of the amount charged from February 2010 to April 2022 is beyond limitation and hence the present complaint for the request to direct the refund of amount charged during February 2010 to 26/04/2022 cannot be considered and hence the complaint to that extent is liable to



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Secretary
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be dismissed being barred by the provisions of clause 7.8 of the MERC (CGRF & EO) Regulation 2020, which has prescribed period of limitation.

- e) Apart from the aforesaid un-tenability of the request of the complainant, to direct the Respondent to refund the amount, on the ground of limitation, we also find that on merits also the claim for refund of amount is not well-founded. No substantial ground has been made out by the complainant for giving such direction for refund. The complainant has not given details of the amount charged illegally in each month. Moreover, in view of the explanation given by the Respondent in their reply read with their recalculation sheets at Exhibit 'O' as referred to herein earlier, it does not appear that the respondent has charged more than the actual payable amount by the complainant. We find that the recalculation made by the Respondent suffers from no illegality as far as the recalculations are concerned. However, on the basis of that recalculation, demand made by the Respondent, as we have noted herein earlier, is beyond limitation in respect of the period from February 2010 to April 2022 in view of the provisions of section 56 (2) the Electricity Act. But, this does not mean that the complainant is entitled for refund of any amount as requested by it. Therefore, the request of the complainant to direct the Respondent to refund of this amount will have to be rejected and hence we have recorded negative findings on clause (b) of point No.(1).
- f) In view of the above findings on clauses (a) and (b) of point no. (1), as recorded herein earlier, we hold that the Respondent will have to be directed to modify their bills and withdraw their demand for the amount due allegedly for the period from February 2010 to April 2022 with liberty to them to demand the charges for the period falling within two years preceding the date on which the respondent has corrected the tariff and contract demand. The request of the complainant for directing the Respondent to refund any amount will have to be rejected. In these terms the instant complaint will have to be disposed off. Accordingly point No.2 has been answered. Hence, we pass the following order:

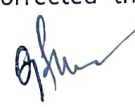

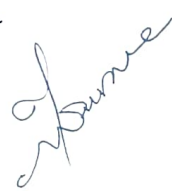
ORDER

The grievance no. A-484-2023 dtd. 27/04/2023 is partly allowed as under :

- a) The Respondent is directed to modify their bills and withdraw their demand of Rs. 1,77,589.73, allegedly due for the period from February 2010 to April 2022 with liberty to the Respondent to demand for the charges due for the falling within two years preceding the date on which the Respondent has corrected the tariff and contract demand pertaining to the complainant's account.




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- b) The aforesaid modification in the bills shall be made by the Respondent within two months from the date of receipt of this order.
- c) The request of the complainant to direct the Respondent to refund of Rs. 4 lacs is rejected.
- 2.0 Copies of this order be given to all the concerned parties.


(Smt. Marisha K. Daware)
Technical Member


(Smt. Anagha A. Acharekar)
Independent Member


(Shri S.A. Quazi)
Chairman




(Milind Karanjkar)
Secretary
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