

BEFORE THE COMPLAINANT 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. 22853561

Representation No. S-(EA)-170-2012 dtd. 30/10/2012

Mrs. Asha K. AgarwalComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum : Chairman
Shri R U Ingule, Chairman

Member
1. Shri M P Thakkar, Member
2. Shri S M Mohite, Member

On behalf of the Complainant : Absent

On behalf of the Respondent : 1. Shri R.S. Kale, Divisional Engineer, Energy Audit
2. Shri A.Y. Khan, AEEA-4
3. Shri U.D. Junnare, AOEA-1

Date of Hearing : 06/12/2012

Date of Order : 13/12/2012

Judgment by Shri. R.U. Ingule, Chairman

Mrs. Asha K. Agarwal, 140-K, Madhavji Thakersi Bldg., Gaiwadi, Cavel X lane no. 7, Kalbadevi, Mumbai - 400 002 has come before the Forum for dispute regarding debit raised for the period from 29/10/1999 to 17/10/2001 pertaining to A/c no. 102-020-841*0.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 30/07/2012 for dispute regarding debit of Rs. 1,80,754.92 raised for the period from 29/10/1999 to 17/10/2001 pertaining to A/c no. 102-020-841*0 which is more than 10 years old and as per law it is time barred. The complainant has approached to CGRF in schedule 'A' dtd. 25/10/2012 (received by CGRF on 25/10/2012) as no remedy is provided by the Distribution Licensee regarding their grievance. The complainant has requested the Forum to cancel the entire demand raised along with the interest charged.

**Respondent, BEST Undertaking in its written statement
in brief submitted as under :**

- 2.0 Meter no. P990747 installed on 29.10.1999 at the complainant's premises i.e. Plot 140/K, Madhavji Thakersi Bldg., Gaiwadi, Cavel X Lane No.7, Mumbai-400 002 was found meter display defective / communication fault i.e. stopped meter at the time of inspection on 11.9.2001.
- 3.0 The defective meter no. P990747 was replaced on 17.10.2001 by meter no.P010678 under intimation to complainant's representative. The said meter's readings could not be obtained since Date of installation as it was stopped. Therefore the bills were sent to complainant on assumed units from 29.10.1999 to 17.10.2001. In scrutiny it was observed that assumed units charged were undercharged. Therefore, the bill was amended for the period from 29.10.1999 to 17.10.2001 on the basis of average monthly consumption recorded by new meter no. P010678 during period from 17.10.2001 to 1.10.2002 which was 6686 units per month for kwh part. The total amount of amended bill was worked out to ₹.7,07,582.39 and same was informed to the complainant vide their letter no.EA/Dept.7/2361/2005 dtd.17.8.2005. Further, it was continuously shown in proclaim bill. Subsequently, the Licensee had sent four letters to the complainant on 26.5.2006, 26.6.2008, 22.9.2009 and 28.7.2010, requesting him to pay the claim amount of ₹.7,07,582.39. Even after, a persistent follow up, the complainant did not pay the amount.
- 4.0 Meanwhile, the Licensee had taken out a Administrative Order no. 349A on 6.1.2011 for revision of old stopped meter cases. Accordingly, the Licensee has revised the claim for the period 29.10.1999 to 29.4.2000 by considering the average monthly consumption of 5028 kwh units recorded during the base period from 6.10.1998 to 29.10.1999 by meter no. 0917276. The revised amendment claim amount ₹.1,80,754.92 was debited in complainant's A/c in the month of June 2012 by informing vide letter dtd. 23.5.2012.
- 5.0 Regarding complainant's contention that the claim is time barred and hence not recoverable, the Licensee has stated that, in the following similar type of two cases consumer's contention is not sustainable as per Court Order by Hon'ble Judge.
- 5.1 BMC v/s Yatish Sharma and Ors. reported in AIR 2007 Bombay 73 to Bombay High Court.
- 5.2 Writ Petition no.7015 of 2008 dtd. 20.8.2009 Rototex Polyester and Anr. v/s. Administrator Administration of Dadra and Nagar Havli (U.T.) Electricity Dept. Silvassa and Ors., High Court of Bombay.
- 5.3 Also, as per AIR 2005, Hon'ble Supreme Court 2486 Lafans case v/s BEST Civil Appeal no.3615 of 1996 dtd. 21.4.2005. Hon'ble Supreme Court has given verdict that during the

stopped meter period consumer can be charged with the average of past 12 months' consumption.

- 6.0 In view of above mentioned orders by Hon'ble High Court and Supreme Court, the amendment bill issued by the BEST is to be treated as accurate and therefore complainant be directed to make the payment of revised amendment claim in order to avoid the disconnection of supply .
- 7.0 The complainant may not be allowed to produce any more evidences before the Hon'ble CGRF during the hearing of the case without giving an opportunity to the Licensee to offer their comments. The complainant shall not be allowed to change the facts of the case presented in their application.

REASONS :

- 8.0 This Forum has heard the representative for the Respondent BEST Undertaking Shri R.S. Kale, Divisional Engineer (Energy Audit). We may observe at this juncture that despite giving the repeated opportunity to the complainant neither the complainant nor her representative appeared to submit her arguments before this Forum. On the last given date the complainant was specifically informed to make it a point to attend the hearing on 06/12/2012 without fail, or else matter would be heard in her absence and this Forum would proceed to pass the order on the basis of the documents placed before it by either parties to the litigation and on hearing the arguments which would be submitted by the Respondent BEST Undertaking. Despite giving such clear-cut instructions to the complainant, nobody cared to appear before this Forum. Therefore, under such circumstances, this Forum proceeds to pass the following order in absence of any oral submission made on behalf of the complainant.
- 9.0 This Forum observes that from the documents placed before us and from the oral arguments submitted by the representative Shri R.S. Kale for the Respondent BEST Undertaking, it can be conveniently gathered that the complainant was provided with a meter no. P990747 installed on 29/10/1999. During the inspection of the said meter carried out on 11/09/2001 by the Respondent BEST Undertaking, it was revealed that the said meter had developed a fault of *display defective*.
- 10.0 We may observe at this juncture that the Respondent BEST Undertaking has placed on file an inspection report of the Energy Audit Dept. at Exhibit 'B', which manifest the said meter had developed a defect of *no display*. Therefore it was replaced with a new meter no. P010678 in presence of the representative of the complainant. Accordingly, this Forum finds the signature along with a rubber seal of the complainant, at the foot of this report.
- 11.0 As the Respondent BEST Undertaking could not retrieve the electricity reading from the meter no. P 990747 which was having a *display defective* fault, therefore proceeded to amend the electricity bill for a period from 29/10/1999 to 17/10/2001 i.e. till the date of replacement of the said defective meter on the basis of average monthly consumption. Accordingly, initially amended bill was worked out to the tune of Rs. 7,07,582.39 and informed the same to the complainant vide letter dtd. 17/08/2005 and thereafter proceeded to inform every year.
- 12.0 It is significant to observe that the Respondent BEST Undertaking issued a new Administrative Order (A.O.) no. 349A effective from 06/01/2011, and in view of the provision made therein the Respondent BEST Undertaking proceeded to revise the said amendment claim for the period from 29/10/1999 to 29/04/2000 i.e. for six months only,

revising the amendment claim to the tune of Rs. 1,80,754.92 and informed the same to the complainant vide letter dtd. 23/05/2012.

- 13.0 It is most vitally important to note that what has been challenged in the complaint before the IGR Cell in Form 'C' and that before this Forum in the instant complaint, is the amendment claim of Rs. 1,80,754.92 for the period from 29/10/1999 to 17/10/2001 which was informed to the complainant in the month of June 2012. The complainant therefore has challenged the said claim *inter-alia* on two grounds. Firstly the said claim of Rs.1,80,751.92 has been time barred as the same has been raised after a lapse of about ten years. Secondly, the said claim of Rs. 1,80,754.92 made by the Respondent BEST Undertaking against the complainant has been bad in law, as the same has not been payable by the complainant.
- 14.0 This Forum therefore observes that what has been challenged before this Forum in the instant complaint is the amended claim made by the Respondent BEST Undertaking against the complainant of Rs. 1,80,754.92. This Forum further observes that the letter dtd. 23/05/2012 at Exhibit 'D' submitted by the Respondent BEST Undertaking manifest that vide this letter it is for the first time the amended claim was quantified to Rs. 1,80,754.92 for a period from 29/10/1999 to 17/10/2001 and informed for the first time to the complainant. Significant to observe that this letter bears the acknowledgment on behalf of the complainant at foot of it.
- 15.0 This Forum now on the backdrop of the aforesaid set of facts proceeds to assess the merit in the contention raised by either party to the litigation. In this connexion the representative Shri R.S. Kale for the Respondent BEST Undertaking has heavily placed a reliance on a judgment of his lordship of the Bombay High Court handed down in a case of **Brihanmumbai Municipal Corporation v/s Yatish Sharma (AIR 2007 Bombay 73)**.
- 16.0 The representative Shri R.S. Kale for the Respondent BEST Undertaking brought to the notice of the Forum that in the said judgment the period for which the supplementary bill was raised was from January 2000 to May 2000. The meter was found to be *stopped* in the site inspection carried out on 27/05/2000. A similar contention was made by the complainant about the supplementary bill raised by petition being time barred one. The Hon'ble Single Bench of Bombay High Court in this case has observed that unless a bill for consumption of electricity is served on the consumer, *a sum* can not be said to be *due* from the consumer, as envisaged under section 56 (1) & (2) of the Electricity Act, 2003.
- 17.0 His lordship further reiterate in para 8 that for the purpose of subsection (1) & (2) of section 56, *a sum* can be regarded as *due* from the consumer only after a bill on account of the electricity charges is served upon him. His lordship further proceeded to apply the provision provided under the Regulation 15.4 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005 for raising the supplementary bill against the complainant.
- 18.0 The representative Shri R.S. Kale for the Respondent BEST Undertaking thereafter proceed to place a reliance on a judgment handed down by Hon'ble Division Bench of Bombay High Court in a case of **Rototex Polyester and Anr. v/s Administrator Administration of Dadra and Nagar Haveli (U.T.) Electricity Dept. Silvassa and Ors., High Court of Bombay (2010(4) Bombay C.R. 456)**. Shri R.S. Kale brought to the notice of this Forum that in this judgment also there was a dispute pertaining raising revised bill in respect of a period from July 2003 to July 2007. In this judgment also their lordship while concluding its order have held that the revised bill amount can be said to be *first due* only on a date on which such revised bill has been served on the consumer.

- 19.0 On going through both these judgments of the Hon'ble Bombay High Court, this Forum upholds the contention raised by the Respondent BEST Undertaking that a revised, supplementary or amended bill become *first due* only on a date of communication of the quantified amount of electricity charges to the consumer. In the instant case under consideration admittedly the amended claim of Rs. 1,80,754.92 as per the A.O. No. 349A has been informed for the first time to the complainant on 23/05/2012. To reiterate, in the instant complaint what has been challenged by the complainant is said amount of Rs. 1,80,754.92 demanded by the Respondent BEST Undertaking from the complainant in the month of May 2012. This Forum therefore holds that the said amended claim of Rs. 1,80,754.92 raised by the Respondent BEST Undertaking against the complainant certainly has not been *time barred* since the said amount becomes first due on 23/05/2012 as observed above.
- 20.0 Now we proceed to consider a merit in a contention, whether it is sustainable on the part of Respondent BEST Undertaking to raise said amended amount of Rs. 1,80,754.92 in the implementation of its A.O. No. 349A which came into effect on 06/01/2011. To reiterate the said amended claim was informed to the complainant for first time on 23/05/2012. In this context this Forum may advert to the judgment handed down by Hon'ble Bombay High Court in case of **Brihanmumbai Municipal Corporation v/s Yatish Sharma (Supra)**. Therein his lordship in para 12 has *inter-alia* observes that State Commission as a delegate of the legislature has framed Regulations, albeit in 2005, the ends of justice would met if the petitioner Distribution Licensee raise a bill as envisaged under Regulation 15.4.1 in respect of the *stopped meter*.
- 21.0 This Forum therefore finds that in the teeth of the Regulation framed by the State Commission as a delegate authority in exercise of its power conferred on it by Section 50 of the Electricity Act, 2003 viz. MERC Regulation 2005, it is highly unsustainable on the part of the BEST Undertaking to provide any A.O. like A.O.349A which runs counter to the regulation provided by the State Commission as a delegate authority. Obviously therefore between the A.O. and said regulation the later would prevail as it is having a statutory force.
- 22.0 In view of the aforesaid observation we find that in respect of the *stopped meter* a second proviso has been provided under Regulation 15.4.1 under the MERC (Electric Supply Code and other Conditions of Supply) 2005. This proviso *inter-alia* provides that in case the meter has stopped recording, the consumer would be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average meter consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.
- 23.0 This Forum therefore proceeds to hold that the Respondent BEST Undertaking was under compulsion to raise the amended bill in respect of *stopped meter* as envisaged under second proviso provided under Regulation 15.4.1, being a statutory provision. To conclude the Respondent BEST Undertaking is required to be issued with a direction accordingly. To this extend the complaint would be liable to be allowed.
- 24.0 In view of the aforesaid observations and discussions we proceed to pass the following order.

ORDER

1. The complaint no. S-(EA)-170-2012 stands partly allowed.
2. The Respondent BEST Undertaking has been directed to issue a fresh amended bill to the complainant in view of second proviso provided under Regulation 15.4.1 of MERC ((Electricity Supply Code and Other Conditions of Supply) 2005, within a period of 15 days from the date of passing this order.
3. The complainant has been directed to pay the electricity charges within a period of 15 days after receiving such amended bill from the Respondent BEST Undertaking.
4. The Respondent BEST Undertaking has been directed to report the compliance of this order within a period of one month there from.
5. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman