

for this tariff the consumer was required to be billed for a month on the basis of connected load or on the basis of actual consumption recorded by the meter whichever is higher. The rate of "SB" tariff was Rs.7 per unit, subject to minimum amount of Rs.75/- per kw per month in addition to other charges such as electricity duty, fuel adjustment charges for the units consumed in the month.

2. However, due to wrong punching of connected load in EDP Dept. the meter was undercharged during the period from 25/06/1998 (date of installation of meter No. T 970139) to 1/05/2001 (date of starting correct billing).
3. The claim amount was informed to the consumer vide letter dated 6/05/2005. The claim amount was inserted in consumer's bill as proclaim since Nov 2006
4. The consumer vide letter dated 17/05/2005 stated that the bill is not payable as the amendment claim pertains to the period from 25/06/1998 to 1/05/2001. A reply was sent by BEST on 23/06/2005.
5. The Consumer complained in Annexure 'C' format on 18/03/2008. The BEST replied on 6/05/2008.
6. Unsatisfied by the reply of licensee the consumer approached CGR Forum in schedule 'A' Format on 31/07/2008.

Consumer in his application and during Hearing stated the following

- 1 The Applicant states and submits that the Applicant is a body Registered under the provision of Section 2 of the Maharashtra Apartment Ownership Act, 1971 having its registered office at aforesaid address.
- 2 The Appellant is aggrieved by the decision of the "INTERNAL GRIEVANCE REDRESSAL CELL" (hereinafter also referred to as 'IGRC') made pursuant to the Petition of the Applicant on March 19, 2008 as there is no formal order and the letter which the IGRC states should be considered as its decision is a letter merely persuading the Appellant to pay monies without any application of mind, it perverse and legally unsustainable.
- 3 The IGRC was pleased to write to the Appellant by way of a letter dated May 06, 2008 bearing reference no. EA/Dept.7/1005/2008-23952. By way of this letter, the Respondent has requested the Appellant to pay a sum of Rs.4,45,826.50 (Rs. Four Lakh Forty One Thousand Eight Hundred Twenty Six Rupees and Fifty Paise only) for no justification whatsoever.
- 4 The Appellant states that it had approached the IGRC for its problems. However, the IGRC did not pass any formal order in the matter. When the chamber junior of the lawyers for the Appellant personally went to Respondents office on dated 25/07/2008 for inquiring the final order of the 'Internal Grievance Cell' it was mentioned to him the letter sent by them was the final and the same be considered as the final order of the IGRC. But that letter was only a persuasive letter only. The Appellant was surprised that they are running the law in this way. Since the claim of the Respondent is barred by law of limitation so he made a request for the final order but they reply that the letter is the final order.

- 5 Suddenly and to the utter shock and surprise of the Appellant on May 06, 2005 it received a letter from the Respondent inter alia stating the Respondent has wrongly billed the Appellant and thus the Appellant was require to pay a sum of Rs.4,45,826.50 as arrears.
- 6 The Appellant has been wrongly billed for the period June 25, 1998 to June 01, 2001. The Respondent was charging SB rate of tariff in the schedule of electricity tariff. The tariff was Rs. 7 per unit and subject of Rs.75 per KW per month in addition to other charges such as electricity duty and fuel adjustment charge etc. Appellant has been illegally called on to pay a sum of Rs.4,45,826.50 as arrears for no justification, reasons or plausible rationale.
- 7 The Respondent by a letter dated June 23, 2005 states that wrong billing was due wrong punching of connected load. There is however no justified and reasonable cause provided for the arrears so demanded.
- 8 That the Applicant is a monthly billing consumer, where in the Applicant has been overcharged for no justified reason. The fact itself shows the evidence for this over charging. That on an average the monthly billing was Rs.12,840/- till October 1, 2006 through April 1, 2007 the monthly charge was reduced to Rs. 3,165/-. However the monthly charge has been increased to Rs. 29,010/- from April 1, 2007 without any justified reason. The Applicant protested to this sudden increase in the monthly charge by way of its letter dated December 3, 2007. That in the said letter the Applicant requested the Respondent to provide reasons for sudden increase of the charges.
- 9 The Appellant states and submits that the Order passed by "INTERNAL GRIEVANCE REDRESSAL CELL" is on the face of it legally unsustainable, improper, unfair, without any rationale/reasons and against the settled facets of natural justice.
- 10 The demand of the Respondent is hopelessly barred by the law of limitation. That the claim for 1998 to 2001 was raised in the year 2005. The demand ought to have been raised within 3 years. However, evidently, in this case it has not been done so. The Respondent therefore cannot now take advantage of its own wrong, through without admitting that there is any amount due, outstanding and payable by the Appellant.
- 11 The statutory provisions under the Electricity Act, 2003 are not considered. Section 56(2) should strictly applied, it is as follow:-

"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".

Now, this section states that no due can be recovered after expiry of two years from the date when such sum became first due. Here in this case the amount due was for the period of June 25th, 1998 to June 1st, 2001. The Respondent is now claiming so-called arrears in the year 2005. Thus, the period of two year has already been expired on 31st May 2003. Even after considering the exception of this section, which says that some dues can be

recoverable only when such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.

- 12 Respondent has not made any claim that the Appellant has not paid any part of the bill which was charged against the Appellant for the period of June 25th, 1998 to June 1st, 2001 thus this exception will not apply in this case.

There is a well-known maxim that 'vigilantibus non dormientibus jura subveniunt' which means tht the law assists the vigilant not those who sleeps over their right. Thus, in this case the claim made by Respondent before the "internal grievance Redressal cell" after a number of years which is contrary to the above maxim. The Supreme Court of India in the case of Motichand v/s Munshi AIR 1970 SC 898 also accepts this maxim. When the Respondent commits any mistake then he should not allow for taking benefit of his own mistake. In this case the Applicant was not suppose to have knowledge of the wrong billing thus the Applicant appears before this authority with clean hands.

Thus, the claim made by Respondent is legally unsustainable, improper, unfair, without any rationale/reasons and against the settled facets of natural justice. The Respondent had stated that bill was wrongly billed due to mistake but on the prima-facie it is not a mistake. Mistake would arise once, or twice or thrice but continuance of such mistake for three long years leads to say that any random claim even after fifty years would be made. This would defeat the ends of justice all together. Thus, if this claim of Respondent would be granted then it would a great hardship to the Appellant.

- 13 That the Applicant states and submits that the decision of the "internal grievance Redressal cell" is perverse, unsustainable, barred by limitation and not just fair and proper. The Applicant is therefore prayed for setting aside the decision of the 'internal grievance Redressal cell'.

- 14 That the Applicant most humbly prays to the Hon'ble Forum to

- a) that it be declared that the demand made by the Respondent are unjustified, improper and not in accordance with the law and thus be quashed and set aside:.
- b) that the claim made by the respondent is bared by law of limitation.
- c) direct the Respondent to continue supply of electricity to the Applicant until final hearing and disposal of the instant petition:
- d) for interim ad-interim relief in terms of prayer causes (a) and (b) above.
- e) for any other order to meet the end of justice.

- 15 The Appellant submit that the Respondent has relied upon the case of BMC V/s. Yatish Sharma & Others AIR 2007 Bombay 73, in their written submission. Before considering any case it is important to consider the facts and circumstances of the case. In this case the facts are totally different, brief facts of this case are as follow:

Fact:- 'The consumers were charged according to industries GP – 1 Tariff. On 15th January 2000, the consumer made an application for installation of an electronic meter and for the change of the tariff from GP 1, to GP 2, on the ground that the existing consumption which was more than 3000 thousand unit per month was likely to increase. On January 19, 2000, the two existing

meters were replaced by an electronic meter. The tariff was charged from GP – 1 and GP – 2, during the period of January 19, 2000 to May 27, 2000 the reading were not taken by the petitioner or its concerned officials. Thus for the month of January to May 2000, in the absence of meter reading, the consumer were not billed for that period. In the month of May 2000, BEST issued a bill to the complainant on an assumption. Thus the complained was filed’.

However, in the instant case the Petitioner/Appellant is not an industry; it is residential condominium and is a month – to – month billed consumer. Bills have been issued by the Respondent and the same was accordingly paid by the Complainant.

The section 56(2) of the Electricity Act, 2003 is having overriding effect. Thus this section should be strictly followed. In the case cited by the Respondent, paragraph 11, Justice D.Y. Chandrachud has clearly mentioned that Section 56 (2) should have plain and grammatical interpretation.

Thus according to this section a sum of amount which is due to the consumer can be recovered only within 2 years from the date when such amount become first due unless such sum has been shown continuously as recoverable as arrears of charges of electricity supplied. Here the term first due has been interpreted by Justice D.Y.Chandrachud, in the same case, which is a follow –

The word “Due” in this context must mean due and payable after a valid bill has been sent to the consumer. In this case the bill which has been raised by the Respondent should be considered as valid bill. All bills that are raised by the Respondent, the consumer take it on face value believing it to be true and payable. In some cases, of course, there are disputes with regards to billing, which too are more in the industrial segment rather than the residential segment.

16 As per Section 115 of the Indian Evidence Act 1872, this is as follow:

“When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing”.

In this case the respondent has raised the Electricity Bill for the period of June 25, 1998 to June 01, 2001, thus, the validity of the bill which has been already raise, cannot be challenged. So the Respondent should stop from challenging the validity of the bill which has been already raised. According to this section even due to omission some declaration or act has been done then also the person made such declaration cannot raise objection on the validity of the declaration.

In our case the Respondent have raised the bill month – to – month and the Complainant have paid the bill accordingly.

Thus, in the facts and circumstances of the case as explained above it is clear that the case of the Respondent is devoid and merit and deserves to be dismissed with costs to the Appellant.

- 17 Complainant would have considered regarding payment of outstanding amount if the supplementary bill would have been raised within period of 2 years from the date when such amount became first due and the same had been shown continuously as arrears in their bills.
- 18 It would be inappropriate to demand the OS amount as the owner of the flats in the Co-operative Housing Society keeps on changing their housing society is a 19 storied building having 58 Nos of flats.

BEST in its written statement and during Hearing stated the following:

- 1 Due to wrong punching of connected load in EDP Dept. the meter was undercharged during the period from 25/06/1998 (date of installation of meter No. T 970139) to 1/05/2001 (date of starting correct billing). Hence the bills for said period were amended as follows:
- | | | |
|----------------------|---|----------------------------------|
| Amendment period | - | 25/06/1998 to 1/05/2001 |
| Reason for amendment | - | Wrong punching of connected load |
| Basis | - | connected load 171.15 KW |
| Claim amount | - | Rs.4,45,826.20 |
- 2 The consumer vide letter dated 17/05/2005 stated that the bill is not payable as the amendment claim pertains to the period from 25/06/1998 to 1/05/2001. A reply explaining all the details desired by the consumer was forwarded on 23/06/2005.
- 3 When the complaint in Annexure 'C' was received, the case was restudied. The case neither falls under any supply code clause nor under Administrative Order.332. The claim found to be in order. Hence factual position as regard claim amount was again informed to the consumer vide letter dated 6/05/2008.
- 4 We have informed due justification of the amendment claim of Rs.4,45,826.50 to the consumer vide our letter 6/05/2005, 23/06/2005, 12/02/2008 and 6/05/2008.
- 5 Revised tariff schedule came into force w.e.f. 1st Oct.2006, which was again revised and the new tariff schedule was implemented w.e.f. April 2007. Due to revision in tariff rates the variations are there in the bill amount during 2006-2007. This explanation has been present in our reply vide letter dated 06/05/2008 to the complainant's letter submitted under IGRC.
- 7 The law is well settled that the claim is said to be preferred only when a bill is issued to the consumer. It is also held by Hon'ble High Court of Bombay in the case of BMC V/s Yatish Sharma & Others reported in AIR 2007, Bombay 73, that a sum can be said to be 'due' from consumer only after bill is served upon. In the instant case the payment becomes due when the bill is served on the consumer and bills are issued to the consumer on 06/05/2005. The consumer is therefore liable for payment and the claim is strictly in accordance with section 56(2) of the Electricity Act 2003. The contention of the consumer is therefore not sustainable.

- 8 Meter No. T 970139 was installed on 25/06/1998 under 'SB' tariff category for using electricity under emergency situations such as fire or building collapse. It is to be informed that we are taking extreme care to ascertain continuous and reliable supply to meters installed for Stand-by (Emergency Supply) purpose for fire fighting activity by the fire department in residential premises. For this reasons, we are laying extended service cable lines from separate electrical networks to ensure that there are no supply interruptions to the Stand-by cable during emergencies even if regular supply fails. It is necessary to always keep the spare capacity available in our electrical network for his purpose for which we are incurring significant capital expenditure. Nevertheless, we have always laid emphasis on saving human life and property by ensuring continuous and reliable power supply during emergencies.
- 9 The amendment claim raised is based on actual connected load and is in order.
- 10 Complainant did not dispute when he was served the correct bill from June 2001 onwards even though the same was several times higher than the bill amount during the disputed period.

Observations

- 1 The amendment claim of Rs.4,45,826.50/- made by the respondent is for wrong billing occurred due to human error in punching of connected load. Respondent has agreed for the mistake done.
- 2 The Consumer did not dispute the correct billing since June 2001 even though the same was many times higher than the bill served during the disputed period. The consumer is challenging the claim for the period 1998-2001
- 3 The Consumer has requested to set aside the claim by raising various points.
- 4 Consumer wants the forum to consider the section 56(2) of the Electricity Act 2003. Considering the judgment by Hon'ble High Court of Bombay in the case of BMC V/s Yatish Sharma, provisions of this section are not applicable in the present case.
- 5 The respondent wants to use the provision of law of limitation. However he has not sighted any specific clause of this act. Under the circumstances such argument can not be considered to give any relief to the consumer.
- 6 The consumer has mentioned Section 115 of the Indian Evidence Act 1872. However to get benefit of this act, consumer has to prove that the other side intentionally mislead the consumer. It is difficult to imagine that the licensee intentionally gave the bill with less amount. It has to be also noted that as per clause 6.19 of MERC Regulation 2006, the forum is not bound by the Indian Evidence Act 1872.
- 7 Considering the above points the Forum is unable to accept the prayer of the consumer.

ORDER

1. The request of the complainant to withdraw the claim amount for the disputed period is rejected.
2. Complainant is directed to pay the amendment claim of Rs.4,45,826.50/- within 30 days from the date of order. No D.P. Charges, if any be levied on the complainant for the disputed period.
3. Copies be given to both the parties.

(Shri. M. P. Bhave)
Chairman

(Shri. S. P.Goswami)
Member