

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. 22853561

Representation No. N-EA-197-2013 dtd. 12/06/2013

Mr. Farid NooraniComplainant

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 : 1. Shri Asif M. Khan

On behalf of the Respondent : 1. Smt. Manasi M. Borade, Supdt. CC(EA)
2. Shri R.D. Nakhate, Sup(P), CC(EA)

Date of Hearing : 23/08/2013

Date of Order : 28/08/2013

Judgment by Shri. R.U. Ingule, Chairman

Mr. Farid P. Noorani, Biwarabai Chawl, Opp. Hira Panna Mall, Pandit M.M. Marg, Haji Ali, Mumbai – 400 034 has come before the Forum for grievance regarding debit of Rs. 10,83,759.56 in monthly electricity bill for the month of February 2013 towards the tariff difference between LT-II(a) tariff and LT-II(b) tariff for the period 01/01/2009 to 01/06/2011 as the complainant's maximum demand was more than 20 kw against sanction load of 11.30 kw pertaining to A/c No. 202-004-389.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 14/03/2013 for grievance regarding illegal demand of Rs. 10,83,759.56 pertaining to A/c No. 202-004-389. The complainant has approached to CGRF in schedule 'A' dtd. 06/06/2013 (received by CGRF on 07/06/2013 as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to waive the outstanding amount of erstwhile consumer.

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

- 2.0 This is a case of claim towards tariff difference for the period from 1.1.2009 to 1.6.2011 for consumer A/c no. 202-004-989, meter No.P060278. The consumer now has meter no.P110375 from 13.10.2011 with tariff of LT II b under cycle 24 for Installation No. 0098391 in the name of Mr.Farid A.Noorani, Biwarabai Chawl, Opp.Heera Panna Mall,Haji Ali, P.Madan Mohan Malviya Marg,Tardeo,Mumbai400 034.
- 3.0 The above consumer was having a 3 phase conventional meter no. Q940333(Three phase, S.L.=8.7kW) and O228991 (Single phase, S.L.=2.6kW), as per the installation card. The total sanctioned load as 11.30 kW, having A/c no.747-013-009, installation no.0098391, tariff C1. Further, for the tariff change from C1 to C2 on consumer's request, the above meter was replaced by electronic meter no.P970227 on 29.8.1997, with the new A/c no.200-004-989. The sanctioned load as per record was 11.30 kW. Further, meter no.P060278 was replaced by meter no.P110375 on 13.10.2011 under ToD drive. As per the tariff schedule, approved by MERC, the new tariff LT II a was made applicable to the consumer's A/c w.e.f. 1.6.2008 since the sanctioned load as per records was 11.30kW.
- 4.0 During routine scrutiny of recorded M.D. of electronic meters pertaining to LT II a tariff in the bill month of Feb.2011, it was noticed that, the M.D. recorded by meter no.P060278 was 27.89 kW against the 11.30kW sanctioned load as per records. On detailed scrutiny of past records, the consumer's meter no. P060278 had recorded MD continuously above 20kW since bill month of Jan-2009. The statement of E-units of this meter clearly shows this fact. Thus, the consumer was eligible for LT II b tariff from Jan.2009 onwards. As a first action, the consumer's tariff was changed from LT II a to LT II b from the billing month of July-2011. The consumer is paying bills as per the new LT IIb tariff from July-2011 till date.
- 5.0 Subsequently, the meter no.P060278 was replaced by ToD compatible meter no.P110375 on 13.10.2011. However, the sanctioned load as per records was 11.30kW. After implementation of correct tariff i.e. LT IIb for consumer A/c from July-2011, the total debit worked out to Rs.10,83,759.56 for tariff difference of the period Jan.2009 to Jun.2011 and intimated same to the consumer vide letter dtd. 24.1.2013 and tariff difference amount of .10,83,759.56 was debited in consumer's A/c in the bill month of Feb.2013.
- 6.0 Consumer disputed the matter and registered complaint under Annexure `C' vide letter dtd. 14.3.2013 and represented that they are not liable to pay the said claim amount as the usage of electrical load for above period was below 20kW and informed that Undertaking had not intimated him about excessive maximum demand. The complainant also mentioned that they have already applied for extension of load from 11.30kW to 31.40kW in April 2012 at Customer Care `E' ward and requested to reverse the debit amount of Rs.10,83,759.56 from their bill of Feb.2013 and also requested to accept current amount of every month bill till the matter is resolved.

- 7.0 In response to Annexure `C' complaint, a reply was forwarded to the consumer vide our letter dtd. 25.3.2013 and informed that claim of Rs.10,83,759.56 raised towards tariff difference from 1.1.2009 to 1.6.2011 is correct and is in order as MD recorded by consumer meter was greater than 20kW from Jan.2009 consistently till date as per section 56(2) of EA, 2003.
- 8.0 As per consumer's request, we have accepted current part of monthly bill amount from Feb.2013 to Apr.2013. Further, we had already informed consumer regarding change of tariff from LT II a to LT II b as recorded M.D. of meter no. P060278 was above 20kW while replacement of meter no. P060278 under ToD drive activity. Now, consumer is having meter no. P110375 with LT II b tariff vide A/c no. 202-004-989 under cycle 24 with 31.40 kW sanctioned load as per records.
- 9.0 In view of the above, the tariff of the consumer was changed to LT II b from bill month July 2011. Since the consumer was charged with the lower tariff since Jan 2009, even though the consumer was enjoying M.D. more than 20kW, it was necessary to recover the tariff difference amount for the period Jan 2009 to June 2011 for raising correct / valid bill for aforesaid period. Thus, the revised bill for the above period became 'first due' in Feb.2013 which is within the purview of u/s 56(2) of Electricity Act 2003. This is also as per Sr.No.3 of the Administrative Order no.349A dtd. 06.01.2011 issued by GM, BEST Undertaking.
- 10.0 In case of "M/s Rototex Polyester v/s Administrative of Dadra & Nagar Haveli, Electricity Department, Silvassa", (Writ Petition No. 7015 of 2008), in the judgment, the Hon'ble Division Bench of Bombay High Court has also adverted to the judgment of U.A.Thadani & Anr v/s BEST Undertaking & Anr. (2000 102(2) Bom. L.R. 502, BEST v/s Yatish Sharma & Ors. 2007 (3) Bom. C.R. 659, Bharat Barrel & Drum Manufacturing Company Pvt. Ltd. v/s Municipal Corporation of Greater Bombay AIR 1978 Bom. 369, H.D.Shourie v/s Municipal Corporation of Delhi, AIR 1987 Delhi 219. Vide Sr. No.18 of the judgment, the electricity charges to be recovered from the consumer becomes "first due" from the date of demand notice with revised bill served on the consumer by the distribution licensee. Further, it is mentioned in the judgment that Section 56(2) of the Electricity Act 2003 would not come in the way of the respondents (distribution licensee) from recovering the said amount under the revised bills. Hence, in the instant case, for the amendment period 01/01/2009 to 01/06/2011, the tariff difference amendment claim amount of Rs.10, 83,759.56 became "first due" when it is debited to consumer's account in the bill month of Feb-2013 and is recoverable even after the expiry of a period of two years from the amendment (disputed) period, but not recoverable after the expiry of the period of two years from the date when such sum became "first due". The limitation of two years is to be reckoned from the month of Feb-2013 and the licensee is empowered to cut off the supply of electricity during this period of two years, in case, the consumer defaulted to make the payment as envisaged under subsection (2) of section 56 of E.A.2003. The claim amount of electricity charges of Rs.10, 83,759.56 is recoverable within two years from the date of "first due" i.e. Feb-2013 and therefore can not be said as the action of BEST Undertaking is violating the Electricity Act 2003, Section 56(2), as alleged by the complainant.
- 11.0 The Hon'ble Division Bench of Bombay High Court in case of M/s. Rototex Polyester (Supra) after considering all above judgments referred above laid down principle that in case a consumer is under billed on account of clerical mistake or due to oversight the bar of limitation cannot be raised by consumer. The Hon'ble Delhi High Court, in case of H.D.Shourie (Supra) in agreement with it Hon'ble Division Bench has observed

that the word "Due" means due and payable after "valid bill" has been sent to the consumer.

- 12.0 We had informed all consumers time to time with message printed in monthly bill from July.2008 regarding revision of tariff order every year as well as recorded Maximum Demand of meter but consumer never contacted Undertaking for regularization of load upto bill month April 2012.
- 13.0 The net debit amount towards change in tariff amendment worked out to Rs.10,83,759.56 was informed to consumer vide our letter dtd. 5.2.2013 and debited in bill month Feb.2013 hence total bill amount payable is of Rs.14,49,291.00 for the bill month Jun.2013 inclusive of DPC and interest on arrears.
- 14.0 The amendment claim raised towards tariff difference in consumer's A/c is correct and is in order hence cannot be withdrawn / waived off. The complainant may not be allowed to produce any more evidences before the Hon'ble CGRF during the hearing of the case without giving us an opportunity to offer our comments. The consumer should not be allowed to change the facts of the case presented in his application.

REASONS

- 15.0 We have heard representative Shri Asif M. Khan for the complainant and for the Respondent BEST Undertaking Smt. Manasi M. Borade, Supdt. along with Shri R.D. Nakhate.
- 16.0 In the instant complaint, the complainant has approached this Forum with a grievance that he is having an electric meter no. P060278 with a/c no. 202-004-989 and paying the electricity bill regularly to the Respondent BEST Undertaking. However, all of a sudden the complainant received a letter dtd. 24/01/2013 from Divisional Engineer of Energy Audit Department demanding Rs. 10,83,759.56, on ground that the complainant was liable to pay the electricity charges as per the rate prescribed for LT-II(b) during a period from January 2009 to June 2011. The Respondent BEST Undertaking further informed that during this period, the maximum demand of the complainant was more than 20 kw. It is pertaining to note at this juncture that, it was mandatory for the complainant to approach and apply for increasing the sanctioned load, when he started using the additional load exceeding sanctioned load to him. Viz 11.30 Kw. Therefore he was liable to pay at the rate prescribed for LT-II(b), however, the Respondent BEST Undertaking has under charged him the electricity at the rate prescribed for LT-II(a). The Respondent BEST Undertaking therefore, demanded the difference in charges of electricity payable by the complainant of Rs. 10,83,759.56 for a period from January 2009 to June 2011, as the complainant was under billed for the said period.
- 17.0 The complainant has vehemently submitted that as the amendment bill has been for a period from January 2009 to June 2011 and intimated the difference in electricity charges of Rs. 10,83,759.56 for the first time vide a letter dtd. 24/01/2013 and proceeded to debit the said amount in the complainant's account in the bill for the month of February 2013, the said claim made by the Respondent BEST Undertaking has not been maintainable under subsection (2) of section 56 the Electricity Act, 2003 (for short EA 2003). The representative Shri Asif Khan for the complainant further elaborated that the provisions provided under section 56(2) of EA 2003, blatantly manifest that the electricity charges to be demanded should be within a period of two years when it becomes first due for which the bill is prepared. Therefore, as the bill has been demanded first time on January 2013, the Respondent BEST Undertaking cannot demand any dues of electricity charges for a period prior to January 2011.

- 18.0 The complainant further vehemently submitted that on one hand the Respondent BEST Undertaking proceeded to replace the meter no. P060278 on 13/10/2011 and at the same time informed the complainant about the tariff being changed to LT-II(b) from the month of May 2011, and on the other hand it ignores the alleged increase in utilization of electricity load during a period 1st January 2009 to June 2011 by meter no. P060278 and proceeded to inform him in the month of January 2013. It is therefore, the amendment claim made by the Respondent BEST Undertaking has not been proper and does not have any legal support. At the most it can ask only amount restricted to three months i.e. for April 2011 to June 2011 as per MERC Regulation 15.4.1.
- 19.0 In counter, the representative of the Respondent BEST Undertaking has submitted that it is on scrutiny of the record pertaining to the consumption of electricity by the complainant, it was observed that Maximum Demand (MD) recorded by the meter no. P 060278 provided to the complainant was more than 20 kw from 1st January 2009 onward. Therefore, the complainant was required to be billed on demand charges instead of fixed charges, under LT-II(b) tariff made applicable as per MERC's tariff order effective from 01/06/2008. Therefore, the Respondent BEST Undertaking proceeded to amend the electricity charges during a period from 1st January 2009 to June 2011 as the maximum demand of the complainant was more than 20 kw and accordingly informed the amended electricity charges of Rs. 10,83,759.56 payable by the complainant as per applicable tariff vide its letter dtd. 24/01/2013.
- 20.0 The Respondent BEST Undertaking further submitted that the complainant's payable charges of electricity has been regularized from LT-II(a) to LT-II(b) from the billing month of July 2011 onward. Accordingly complainant has been paying such electricity charges there from without any demur.
- 21.0 This Forum observes that the Respondent BEST Undertaking in support of its legitimate right to recover the amended bill of Rs. 10,83,759.56 on account of under charging the complainant, proceeded to place a heavy reliance on a judgment handed down by the Hon'ble Division Bench of the Bombay High Court in a case of M/s Rototex Polyester v/s Administrator, Administration Dadra & Nagar Haveli (U.T.), Electricity Department, Silvassa" & Ors, (Writ Petition No. 7015 of 2008), wherein their Lordship have elaborately explored the ambit a scope of expression first due employed by the legislature in subsection (2) of 56 of the EA 2003. The Respondent BEST Undertaking further proceeded to place a reliance on the judgment of the Hon'ble Division Bench of the Bombay High Court in a case of Avdesh Panday v/s Tata Power Company Ltd. (W.P. 2221/2009 decided on 05/10/2006) while pointing out to this Forum a special mechanism provided therein to enable the Respondent Licensee to recover its legitimate dues expeditiously by taking a recourse to a coercive measure like cutting off the electricity supply as provided under subsection (2) of section 56 of the EA 2003.
- 22.0 This forum finds it expedient to peruse these two judgments handed down by the Hon'ble Division Bench of Bombay High Court, as they provides an immense assistance to resolve the instant controversy under consideration.
- 23.0 This Forum on carefully going through the judgment handed down by the Division Bench of the Hon'ble Bombay High Court in a case of M/s Rototex Polyester (supra) finds that the entire focus of Their Lordships was to explore the ambit and scope of an expression 'become first due', employed by the legislature in subsection (2) of section 56 of the E.A.2003. While the Hon'ble Division Bench of the Hon'ble Bombay High Court in a case of Avdesh Panday v/s TPC Ltd. was engaged in exploring the special

mechanism provided by the legislature under subsection(2) of section 56 of the E.A. 2003 of giving coercive power to the Distribution Licensee to recover its dues expeditiously, for improvement of supply of electricity. The Division Bench of the Hon'ble Bombay High Court felt that in its opinion subsection (2) of section 56 provides a limitation to take a recourse to recover its dues by cutting of electric supply of two years from the date when such sum becomes first due. This Forum thus finds that these two judgments deal with and are in respect with two different and distinct facets and ingredients of subsection (2) of section 56 of the E.A. , 2003.

- 24.0 To elaborate on this legal aspect this Forum finds it expedient to advert to the law enunciated by the Division Bench of the Hon'ble Bombay High Court in a case of M/s Rototex Polyester (supra) therein, this Forum finds that in this case the electricity amount as per the contention of petitioner company M/s Rototex Polyester was first time become due in July 2003, but the said claim was raised by the Distribution Licensee on 03/10/2007. Therefore the consumer had contended the electricity charges claim being "time barred", under the provision of 56(2) of the E.A. 2003. In counter in this case on behalf of the Distribution Licensee, a reliance was placed on a judgment of the Hon'ble Bombay High Court in a case of U.S. Thadani v/s BEST Undertaking (2000 102 BOM. L.R. 502) and on a case of Bombay Municipal Corporation v/s Yatish Sharma (AIR 2007 BOM 73) to submit that when an erroneous bill has been served on the consumer due to a clerical mistake or oversight, then while correcting the same, the limitation period of two years provided u/s 56(2) would not come into way of Distribution Licensee.
- 25.0 This Forum finds that the Division Bench of the Hon'ble Bombay High Court in a case of M/s Rototex Polyester (supra) thereafter proceed to peruse section 56 of the E.A. 2003 and relevant provision u/s 26 of the Indian Electricity Act, 1910 and further proceeded to peruse the decision given in case of Bharat Barrel and Drum Mfg. v/s Mumbai Corporation for Greater Bombay (AIR 1978 BOM 369). Thereafter in para 14, the Division Bench of the Hon'ble Bombay High Court deduced the principle inter-alia that in case the consumer has been under billed on account of clerical mistake where the multiplying factor had changed from 500 to 1000, but due to oversight, the department issued the bill with 500 as multiplying factor instead of 1000, the bar of limitation cannot be raised by the consumer.
- 26.0 This Forum further observes that the Division Bench of the Hon'ble Bombay High Court in a case of M/s Rototex Polyester thereafter proceed to consider the law laid down by Hon'ble Bombay High Court in a case of Yatish Sharma (supra) wherein a decision of the Hon'ble Delhi High Court in a case of H.D. Shouri v/s Municipal Corporation of Delhi (AIR 1987 Delhi 219) was taken into consideration to reach to a conclusion that the word "due" would mean due and payable after a "valid bill" has been sent to the consumer. Significant to observe at this juncture that the Division Bench of the Hon'ble Bombay High Court in the case of M/s Rototex Polyester respectfully agreed to the view taken by the Single Bench of the Bombay High Court in a case of Yatish Sharma (supra) and proceed to hold that when the revised bill has been served on 09/11/2007 on the consumer, therefore it becomes 'first due' on this date of 09/11/2007. Therefore the section 56(2) of the E.A. 2003 in this case would not come into way of the Distribution Licensee from recovering charges raised under the revised bills.
- 27.0 This Forum to reiterate thus observes that the entire focus of Division Bench of the Hon'ble Bombay High Court in a case of M/s Rototex Polyester (supra) has been on exploring the ambit and scope of the expression sum become first due to reckon and count a period of two years commencing therefrom, for recovering the electricity charges in arrears by taking a coercive measure i.e. disconnection of electric supply.

28.0 This Forum further observes that to reiterate the entire endeavor of Division Bench of the Hon'ble Bombay High Court in a case of Avdesh Panday (supra) has been to explore the ambit and scope of the special mechanism provided u/s 56(2) of E.A. 2003, enabling the Distribution Licensee to recover its dues expeditiously by taking a coercive measure like cutting of electricity, for which the legislature has provided a limitation of 2 years commencing from the date when such electricity charges becomes first due.

29.0 This Forum on going through this judgment of Avdesh Panday (supra) finds that the dispute addressed by the Hon'ble Division Bench in this case was, whether the demand made by the Respondent TPC Ltd. was contrary to the provision of section 56 of the E.A. 2003. The Electricity Ombudsman by its order dtd. 18/07/2007 had held that the Respondent TPC Ltd. was entitled to recover past dues by correcting multiplying factor. In such peculiar facts and circumstances, Hon'ble Division Bench in Avdesh Panday's case has observed in paragraph no. 7 as under.

“In our opinion, Sub-section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long as a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting-of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or the generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit”.

30.0 In consider view of this Forum going through the law position adverted to above it is certainly within the legal rights of the Respondent BEST Undertaking to amend its electricity charges bill as proper tariff rate has not been applied during the January 2009 to June 2011 and to proceed to debit the account of the complainant for such under billed amount of electricity charges of Rs. 10,83,759.56 and to inform in the month of January 2013. This Forum does not have any hesitation to hold that in law position adverted to above, as envisaged under section 56 (2) of EA 2003 the amended claim of Rs. 10,83,759.56 becomes first due in the month of January 2013 when the said amount has been quantified and made valid and informed to the complainant in the said month.

31.0 This forum may further hasten to add that it was quite discernible in a bare perusal of the meter no. P060278 provided to the complainant, the electricity unit consumption by him along with maximum demand in kw and maximum demand volt amp, and the same shows that it was exceeding 20 kw attracting charging for electricity consumption at the rate applicable under LT-II(b) tariff. The Respondent BEST Undertaking in this context in order to support its contention has placed on file a chart at Exhibit 'J' which blatantly manifests that from January 2009 onward the complainant's connected load was certainly more than 20 kw. It is therefore explicit that the Respondent BEST Undertaking has been proceeding to demand the charges which is legally payable by the complainant. This Forum advert to the contention of the complainant in respect of MERC Regulation 15.4.1 just to discard the same as it is applicable in respect of defective meters and not to difference in tariff rate chargeable to the complainant.

- 32.0 This Forum now advert to the last but not the least contention raised by the representative of the complainant that section 56(2) envisages a period of two years which runs prior to the date when the sum payable becomes first due. In this connexion this Forum observes that as laid down by the Hon'ble Division Bench of the Bombay High Court in a case of Avdesh Panday (Supra) in para 7 in its opinion subsection (2) of section 56 only provides limitation, that the recourse to recover by cutting off electricity supply, is limited for a period of two years from the date when such sum becomes first due. As long as the sum is due, it is within two years that the demand can be recovered by taking a coercive process i.e. cutting off electricity supply.
- 33.0 In consider view of this Forum when the Respondent BEST Undertaking has quantified and demanded a valid electricity charges from the complainant in the month of January 2013, therefore to reiterate it becomes first due in the same month and year. Obviously therefore, to take a recourse to a coercive measure viz. cutting off electricity supply in order to expeditiously recover the due electricity charges, it would not be possible to do so during a period of two years preceding the date when such sum becomes first due i.e. January 2013. Obviously, therefore this period of limitation of two years to recover the electricity charges limited for a period of two years needs to be reckoned onward from the date when such sum becomes first due, then only the same can be recovered by the Distribution Licensee within such period of two years as long as the same is due, by taking the aforesaid coercive measure.
- 34.0 In view of the above observations and discussion we uphold the arguments advance on behalf of the Respondent BEST Undertaking that it is well within its legal right to claim the amended bill of Rs. 10,83,759.56 on the ground of under charging the complainant and it is well within its right to recover the same within a period of two years from the date when the same was informed to the complainant for the first time. To conclude, the complaint is liable to be dismissed, accordingly we do so.
- 35.0 Before we part with this order, we may observe that, there has been a bit delay in passing this order for the reason of adjournment sought by the complainant's representative as he was observing fasting during the holy month of RAMZAN.

ORDER

1. The complaint no. N-EA-197-2013 stands dismissed.
2. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman