

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-181-2013 dtd. 03/01/2013

Mr. Feroz AhmedComplainant

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 Mohd. Saqib A Q Khan

On behalf of the Respondent : 1. Shri R.S. Kale, DEEA
2. Shri D.N. Pawar, DEcc(G/S)
3. Shri S.M. Sonawane, SEA 3

Date of Hearing : 28/02/2013

Date of Order : 04/03/2013

Judgment by Shri. R.U. Ingule, Chairman

Mr. Feroz Ahmed, Gr. Floor, Room no. 48, Gandhi Nagar, Dainik Shivneri Marg, Worli, Mumbai - 400 018 has come before the Forum for grievance regarding high bill due to accumulated units consumed from the date to installation meter pertaining to A/c no. 202-000-043.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 18/10/2012 for grievance regarding high bill due to accumulated units consumed from the date of installation meter pertaining to A/c no. 202-000-043. The complainant has approached to CGRF in schedule 'A' dtd. 24/12/2012 (received by CGRF on 01/01/2013) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to direct the Undertaking to issue him correct the bill.

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

- 2.0 This is a case of receipt of accumulated electricity bill by complainant for twelve months for the period 01/08/2011 to 01/08/2012, wherein we have levied tariff charges for the entire units registered on new meter no.P086805, as per revised tariff schedule of 01/06/2012.
- 3.0 The complainant was having a 3 phase conventional meter no.L951670 installed on 09/08/1995 with sanctioned load of 7.94 kW for installation no. 0867665 under commercial tariff vide account no. 720-019-041 as per data available in Vidushi billing system. Further meter no. L 951670 was replaced by new meter no-M110964.
- 4.0 Vide requisition No. 38757 , the complainant had applied for extension of load from 7.94 kW to 25 kW of installation no.0867665 at Customer Care G/S ward. Same requisition was re-registered as 64764 in June 2011. After necessary compliance by complainant the meter no-M110964 was replaced by new meter no-P086805 on 17/08/2011, vide Connection Order no-38757 under account no. 202-000-043. However, new meter no. P086805 was updated in system after a period of twelve months approx. and first bill was generated to complainant for consolidated total 63655 kWh units (*consumption of both old and new meters (584+63071=63655)*) for the period 17/08/2011 to 31/07/2012 in billing month of Aug.2012 under applicable LTII b tariff.
- 5.0 After receipt of the bill, complainant Mr. Firoz Ahmed disputed the matter and registered a complaint in Annexure 'C' at Customer Care G/S ward and Energy Audit Department vide his letter dated 18.10.2012 against the cumulative bill amount of ₹ .11,30,127/-. Subsequently, we have verbally informed complainant to approach Customer Care G/S ward to get installment of bill amount and accordingly complainant obtained installments to pay the bill amount. The complainant has partly paid the bill amount. In Annexure 'C' complaint complainant has represented that, " they have made part payment against cumulative bill amount and asked slab benefit of conventional A/c and corrected bill of Aug.2012. "
- 6.0 It is to be mentioned that reply to complainant's Annexure 'C' complaint was given by Customer Care G/S ward on 27/11/2012. Further, we have replied complainant about working of actual debit/credit of his disputed bill amount vide our letter dated 04/01/2013. Also, we have now intimated the complainant about the net credit of ₹ .89,327.06 vide our debit/credit intimation letter dated 15/01/2013.

- 7.0 Now complainant has registered a complaint in Annexure 'A' form dtd.24/12/2012, received in CGRF on 03/01/2013 and asked correct bill for bill month Aug.2012 and enclosed 4 nos. of electricity bill copies.
- 8.0 It is a cumulative bill case due to non-updation of new meter no.P086805 in Vidushi system. Now, the revised bill preferred for period 01/08/2011 to 01/08/2012 wherein debit of ₹ .10,40,502.00 and credit of ₹ .11,29,829.07 resulting in net credit of ₹ .89,327.06 is being given in complainant's A/c in January 2013 bill which is correct and is in order.

REASONS

- 9.0 This Forum has heard Shri Mohd. Saqib A Q Khan for the complainant and for the Respondent BEST Undertaking Shri R.S. Kale (DEEA), Shri D.N. Pawar (DECC(G/S)) and Shri S.M. Sonawane (SEA 3). Perused papers.
- 10.0 The controversy raised in the instant complaint before this Forum, moves in a very narrow compass. The complainant *inter-alia* contends that, he has not been served with the electricity bill as per provisions provided under MERC (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005, Regulation no. 15.4.1. The complainant's meter was not read for more than one year by the Respondent BEST Undertaking. While serving an accumulated bill on the complainant, the Respondent BEST Undertaking ought to have given a *slab benefit* to the complainant. The complainant has been wrongly imposed with a *power factor penalty* of Rs. 2,77,014.51. Therefore, pray for direction to the BEST Undertaking to correct the electricity bill served on him.
- 11.0 At the outset this Forum observes that the Respondent BEST Undertaking has admitted that on obtaining a requisition from the complainant in the month of June 2011 for extension of load from 7.94 kw to 25 kw, a new meter no. P086805 was provided to the complainant on 17/08/2011. However, this new meter was not *updated in system* for a period of approximately 12 months. Therefore, the first electricity bill was generated and served on the complainant in the month of August 2012 for the sanctioned load of 25 kw under LT-II b tariff for consolidated total units of 63655 for the period from 01/08/2011 to 31/07/2012.
- 12.0 Under such admitted circumstances, the Respondent BEST Undertaking has therefore proceeded to manually prepare and duly get audited the month-wise billing calculation for the complainant from 01/08/2011 to 01/08/2012 amounting to debit of Rs. 10,40,502.00 and credit of Rs. 11,29,829.07, resulting in giving net credit of Rs. 89,327.06 adjusting the same in Vidushi Billing System and proceeded to inform the complainant vide letter dtd. 15/01/2013. Accordingly, this Forum finds a letter addressed to the complainant at Exhibit 'H' bearing a signature along with rubber stamp of the complainant at the foot of it dtd. 15/01/2013. This Forum thus finds that the complainant has already been given the benefit of slab-wise benefit and informed him accordingly as observed above.

- 13.0 Now we proceed to see whether there is a warrant and justification available to the Respondent BEST Undertaking to impose a *power factor penalty* of Rs. 2,77,014.51 on the complainant, as shown in a monthly bill for the month of August 2012 served on him and placed before us at pg. 5 along with the complaint. In this context we observe that it has been strenuously urged on behalf of the Respondent BEST Undertaking by Shri R.S. Kale that a complainant having demanded extension of load from 7.94 kw to 25 kw in the month of June 2011, thereby falls under a tariff viz. LT-II b. Therefore he has been under an obligation to maintain a *certain power factor level* as per the provision made in the tariff schedule sanctioned by MERC. In the event of having a *low power factor* a penalty would be levied on the consumer. And if consumer maintains a good power factor, then consumer would be entitled for incentive.
- 14.0 The representative, Shri R.S. Kale for the Respondent BEST Undertaking further contends that in case of the complainant, it has been observed by the Respondent BEST Undertaking that the complainant has failed to maintain a good power factor, therefore as per the provision provided under the tariff he becomes liable to pay the penalty. Accordingly, the Respondent BEST Undertaking considering the utilization of power by the complainant during a period from 01/08/2011 to 01/08/2012 has calculated a penalty amount of Rs. 2,77,014.51 and levied the same in the electricity bill for the month of August 2012. This action taken by the Respondent BEST Undertaking has been in accordance with provision provided under the tariff approved and sanctioned by MERC, therefore the complainant has been liable to pay the said power factor penalty.
- 15.0 This Forum however finds itself unable to ascribe any merit to the said contention raised by Shri R.S. Kale for the Respondent BEST Undertaking for a simple reason that admittedly the Respondent BEST Undertaking has served a first revised bill under LT-II b tariff for the first time after a lapse of about approximately 12 months. In consider view of this Forum, had the Respondent BEST Undertaking served the electricity bill to the complainant under the LT-II b tariff promptly per month, in that contingency and event the complainant would have been aware whether he has been maintaining a good power factor or not. Accordingly, the complaint could have availed an opportunity to avoid the penalty and instead could have put his best efforts to earn the incentive.
- 16.0 However, we find that such vital prayer made by the complainant has been denied by the Respondent BEST Undertaking that too when the lapse was on its part as it has failed to update the installation of new meter in its system. In consider view of this Forum on account of said admitted lapses on the part of the Respondent BEST Undertaking, no penalty can be levied on the complainant viz. of Rs. 2,77,014.51 in the bill for the month of August 2012.
- 17.0 At this juncture, this Forum finds it fit to advert to the arguments advanced by Shri R. S. Kale for Respondent that the complainant ought to have monitored the consumption on its meter for maintaining *good power factor* to avoid penalty. He further argued that the services of an expert like licensed electrical contractor (for short LEC) were available to complainant and further more, in view of Respondent LEC is the "Consumer".

- 18.0 This Forum however finds said arguments advanced by Shri R. S. Kale for Respondent, being devoid of any merit, for a simple reason that the complainant has been a `layman' and therefore not expected to monitor the meter and that too on day to day basis and further to assess maintenance of "good power factor". Further it is the complainant with whom Respondent is having a *privity of contract*. Admittedly with LEC, the Respondent neither has a *privity of contract*, nor LEC consumes electricity. Therefore by no stretch of imagination LEC can be called as "consumer". In view of this Forum in this manner the Respondent can not take full liberty with reality for imposing unjustified penalty of Rs. 2,77,014.51, on the complainant.
- 19.0 Now this Forum proceed to advert to the last but not the least contention raised by the complainant that, it is highly uncalled for and unsustainable on the part of the Respondent BEST Undertaking to serve an accumulated bill for a period of 12 months on the complainant. In this context, this Forum observes that the Hon'ble Division Bench of Bombay High Court in case of **M/s Rototex Polyester v/s Administration, Administrator of Dadra Nagar Haveli, Electricity Department, Silvassa (W.P. no. 7015/2008)** has held that the licensee has been entitled to correct its bonafide mistake occurs on the ground of *clerical mistake* or *oversight* and correct the same and the same would be treated as electricity charges *due* and *payable* after such *valid bill* has been served for the purpose of an application of provision provided u/s 56(2) of the Electricity Act, 2003.
- 20.0 This Forum therefore proceeds to hold that in the present complaint, there has not been an inordinate delay, as the same has been approximately of 12 months. As observed by Hon'ble Division Bench of Bombay High Court it is open to the Distribution Licensee like Respondent BEST Undertaking to rectify its **clerical mistake** or **mistake occur due to oversight** and demand the arrears of electricity from its consumer and further can proceed to take action contemplated u/s 56(2) under Electricity Act, 2003.
- 21.0 Much hue and cry has been made by the complainant that as provided under regulation no. 15.4.1 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulation 2005, the Respondent BEST Undertaking ought to have served a bill every month on recording a reading of meter provided to him. In this context, this Forum observes that such provision has been made under Regulation no. 15.1.1 and not under Regulation 15.4.1.
- 22.0 True, that under the Standard of Performance, a penalty has been provided for not recording the reading of the meter once in every two months. However, in the case on our hand admittedly the complainant was served with a bill till the month of July 2012 considering his load being 7.94 kw, when it was well within his knowledge that he has been provided with a load of 25 kw from the month of August 2011. Thus this Forum finds that the complainant found to have been blissfully complacent in paying the electricity charges at lower rate fully knowing that the load of 7.94 kw has been wrongly mentioned in his electricity bill.

- 23.0 A feeble attempt has been made by the complainant to contend that after receiving such electricity bill he had approach the officers of the Respondent BEST Undertaking but in vain. While on the other hand the representative of the Respondent BEST Undertaking has stoutly denied any such attempt made by the complainant. This Forum thus find a word against word. In this regard significant to observe that no any written complaint has been made by the complainant to the Respondent BEST Undertaking on the subject.
- 24.0 This Forum therefore finds itself unable to ascribe any merit to such ill founded contention raised by the complainant. Under such peculiar circumstances this Forum holds that it would be unwarranted and unjustified to impose any penalty on the Respondent BEST Undertaking under the Standard of Performance as it would amount to putting a premium on the lapse on the part of the complainant.
- 25.0 In the aforesaid observation and discussion the complaint should partly succeed. Accordingly we proceed to pass the following order.

ORDER

1. The complaint no. N-EA-181-2013 stands partly allowed.
2. The Respondent BEST Undertaking has been restrained from imposing 'power factor penalty' for a period till the first bill served on the complainant in the month of August 2012.
3. The Respondent BEST Undertaking has been further directed to serve a fresh electricity bill on the complainant within a period of one month from this date, as observed and discussed above.
4. The Respondent BEST Undertaking further directed to allow the complainant to pay electricity charges in arrears in three equal monthly installments after receipt of electricity bill as directed above.
5. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman