

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-FN-188-2013 dtd. 21/02/2013

Mrs. Kashiben PatelComplainant

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 M.H. Patel
2. Shri Abir Patel

On behalf of the Respondent 1. Shri. M.M. Bhonsle, DECC(F/N)
2. Shri G.K. Lambhate, AAM(F/N)
3. Shri. S.V. Fulpagare, SCC(F/N)

Date of Hearing : 20/03/2013 & 04/04/2013

Date of Order : 22/04/2013

Judgment by Shri. R.U. Ingule, Chairman

Mrs. Mrs. Kashiben Patel, Ishwar Niwas, 1st floor, Swami Gyanjivandas Marg, Dadar, Mumbai - 400 014. has come before the Forum for grievance regarding the billing of second meter no. M086515 after two years from the date of its installation pertaining to A/c no. 596-012-007*1.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 17/05/2012 for grievance regarding the billing of second meter no. M086515 after two years from the date of its installation pertaining to A/c no. 596-012-007*1. The complainant has approached to CGRF in schedule 'A' dtd. 14/02/2013 as no remedy is provided by the Distribution Licensee regarding her grievance. The complainant has requested the Forum to cancel the bill as per section 56(2) of E.A.2003.

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

- 2.0 Consumer Shri Indravadan Patel, C/o Kashiben Patel, Iswar Niwas, 1st floor, Swami Gyanjiwandas Marg, Dadar, Mumbai - 400 014 had approached under Annexure 'C' stating therein that, the electric consumption in respect of meter No. M086515 was not shown since August 2009 for 2 years. A bill for consumption of 21223 units was raised on 08.10.2011. He had agreed to pay the unpaid bills from October 2011 onwards.
- 3.0 It was brought to his notice that meter No. M 086515 in question was a new meter replaced in the month of June 2009 and Meter Reader could not find the meter on the board and as such reading could not be recorded. It was also pointed out that the site investigation was carried out on 18.11.2011 and meter reading for the meter No. M 086515 was observed to be 25987 kWh units. Further that, meter was found O.K. Consumer was satisfied with the testing and appliances such as 8 ceiling fans, 15 tube lights, 3 air-conditioners, television, geyser, refrigerator, washing machine was under use. The facts were brought to the notice of Mrs. Nayana Patel available on site.
- 4.0 Pursuant to the complaints dated 15.12.2011 and 24.05.2012, an amount of ₹18,302.32 was credited in the bill for the month of January 2012 as a slab benefit, which was not given for the period from 06.10.2009 to 30.09.2011 and consumer was asked to pay the bills.
- 5.0 Consumer's plea that no recovery can be made as per Section 56 (2) of the Indian Electricity Act is not correct as this section reads about disconnection of supply. In this case, consumer was using the supply and supply was not disconnected. As such, provisions of Section 56 (2) of the Indian Electricity Act do not attract in this case. The consumer is using the consumption were known to him. Under such circumstances, consumer is liable to pay the total bill excluding the slab benefit of Rs.18,302.32.

REASONS

- 7.0 We have heard Shri M.H. Patel & Shri Abir Patel for the complainant and for the Respondent BEST Undertaking Shri. M.M. Bhonsle, DECC(F/N), Shri G.K. Lambhate, AAM(F/N), Shri. S.V. Fulpagare, SCC(F/N). Perused documents.
- 8.0 Claiming much impunity, the complainant has filed the instant complaint, in her attempt to evade the electricity charges levied on her by the Respondent BEST Undertaking for consumption of 21223 units recorded by the meter no. M086515 installed for residential consumption. On perusing record placed on file this Forum

obviously finds no iota of merit in any contention raised by the complainant before this Forum.

- 9.0 The grievances raised by the complainant has been that, she was provided with two meters viz. 1) M086515 for residential consumption and 2) 0171655 for water pump. The complainant has candidly admitted that the meter no. 0171655 provided for water pump was read by the Respondent BEST Undertaking regularly every month since August 2009. However, no reading was recorded or billed for second meter no. M086515 installed for residential consumption. Thereafter, the complainant further contends that the Respondent BEST Undertaking has deliberately failed to record the consumption of meter no. M086515 and it is on the visit paid by the Vigilance Dept. of the Respondent BEST Undertaking, it came to their notice and the complainant was billed for the first time in October 2011 for total consumption of 21223 units. Taking shelter of the provision provided u/s 56(2) of Electricity Act, 2003, complainant has been terming the said bill raised by the Respondent BEST Undertaking, being time barred.
- 10.0 This Forum, from the contentions raised by the complainant finds that admittedly she was billed for meter no. 017655 but was not billed for the other meter no. M086515 that too from August 2009. In consider view of this Forum it is therefore crystal clear that the complainant was well aware about non billing for the second meter no. M086515. Despite it, the same was not brought to the notice of the Respondent BEST Undertaking by her in order to pay the legitimate electricity charges. However she was complacent in availing the electricity through the meter no. M086515, without making payment against the same. In our view it is totally unjustified on the part of the complainant to take unsustainable and unwarranted recourse to section 56(2) of Electricity Act, 2003 in order to parry the legitimate electricity charges levied by the Respondent BEST Undertaking for consumption of 21223 units.
- 11.0 This Forum finds it expedient to advert to the investigation report dtd. 09/11/2011 in respect of meter no. M 086515 which is a subject matter of the instant complaint, placed on file before this Forum by the Respondent BEST Undertaking at Exhibit-C at pg. 7. A bare perusal of this investigation report manifests that the said meter was checked at site in presence of representative of the complainant to find the same being working properly and accordingly explained to the said representative. This report shows that the correct reading 25987 units have been recorded by the said meter on 18/11/2011 i.e. on the date of investigation. This Forum thus finds that the meter no. M086515 was in proper condition and recording the correct reading accordingly. The said fact noticed during the investigation carried out on 18/11/2011 has been acknowledged by the representative of the complainant. Accordingly, we find the signature of the representative of the complainant at the foot of this report, along with the remark that the investigation remarks were explained to the said representative.
- 12.0 This Forum further finds that admittedly the Respondent BEST Undertaking has charged the complainant for consumption of 21223 units in respect of meter no. M086515 for a period from 07/09/2009 to 30/09/2011. The details of this consumption of 21223 units by the said meter has been placed before this Forum at Exhibit -E at pg. 13 to 17. We further find that the Respondent BEST Undertaking also placed on file meter reading details extracted from the meter no. M086515 at Exhibit-G at pg. 21 to 51. This Forum thus finds that although after installation of meter no. M086515, the reading was not recorded till September 2011, however, the same has been recorded in presence of the representative of the complainant and the details of consumption of 21223 units have been placed on file before this Forum in the documents referred to above.

- 13.0 Now this Forum turns to a solitary contention raised by the complainant in support of her complaint that as provided u/s 56(2) of the Electricity Act, 2003, the charges now claimed by the Respondent BEST Undertaking, has been time barred and therefore, the same cannot be claimed from the complainant. In this connexion it is significant to take into consideration that the Respondent BEST Undertaking has candidly submitted that the section 56 has been provided under Electricity Act, 2003 for *disconnection of supply for default of payment*. However, the Respondent BEST Undertaking never proceeded for disconnection of supply of the complainant for such non-payment of the electricity charges claimed by it. Therefore, neither subsection (1) or (2) of Section 56 would be relied on by the complainant.
- 14.0 This Forum at this juncture finds it expedient to advert to judgment handed down by the Hon'ble Division Bench of the Bombay High Court in a case of *M/s Rototex Polyester v/s Administration, Administrator Dadra Nagar Haveli, Electricity Department, Silvasa (2010 (4) BOM. CR. 456)*. In this judgment the Hon'ble Division Bench of the Bombay High Court has also adverted to the judgment handed down by the Single Bench of the Bombay High Court in a case of *BMC v/s Yatish Sharma (AIR 2007 BOM 73)*. Thereafter the Hon'ble Division Bench of the Bombay High Court in a case of *M/s Rototex Polyester (supra)* has reached to a legal conclusion that as envisaged u/s 56(2) of the Electricity Act, 2003, the electricity charges becomes *first due* when a *valid bill* has been served on the consumer. Therefore in the contingency when the consumer has not been billed at all or not properly billed on account of clerical mistake or oversight, the bar of limitation cannot be raised by the consumer. In short the limitation of period of two years need not be reckoned from the date when a valid bill has been raised against the consumer, as contemplated under subsection 56 of the Electricity Act, 2003.
- 15.0 This Forum therefore finds it crystal clear that in the contingency of oversight or bonafide mistake if the Respondent BEST Undertaking has failed to raise a bill in respect of meter no. M 086515, it is always open for it to raise a *valid bill* for recovery of electricity charges from the complainant and if at all any limitation starts as envisaged u/s 56(2) of the Electricity Act, 2003 it would be reckoned from the date of serving such *valid bill* on the consumer. In the net result when the complainant has not been served with the bill for meter no. M 086515 till October, 2011, it is highly unsustainable on her part to take recourse of subsection (2) of 56 for placing uncalled and unjustified reliance on limitation provided therein. This Forum therefore finds that there is no merit in the said solitary contention raised by the complainant, therefore the complaint should fail. Accordingly we proceed to pass the following order.

ORDER

1. The complaint no. N-FN-188-2013 stands dismissed.
2. Copies be given to both the parties.

Absent
(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman