

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)-160-2012 dtd. 17/07/2012

M/s Maker Tower 'E' & 'F' Premises CHSL.Complainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum :
1. Shri R U Ingule, Chairman
2. Shri S P Goswami, Member
3. Shri S M Mohite, Member

On behalf of the Complainant :
1. Shri. Omprakash Chavan
2. Shri. Umashankar
3. Shri. Prakash Gadkar

On behalf of the Respondent :
1. Shri. D.N. Pawar, DEEA
2. Shri. U.Y. Vajandar, DECC(A)
3. Shri. A.Y. Khan, AE
4. Shri. M.M. Borade, Supdt.
5. Shri. S.N. Bhosle, Ag. CLA
6. Smt. P.S. Kirtikar, Ag. ALA

Date of Hearing : 30/08/2012

Date of Order : 17/09/2012

Judgment by Shri. R.U. Ingule, Chairman

Maker Tower 'E' & 'F' Premises CHSL., 61, Maker Arcade, Cuffe Parade, Colaba, Mumbai - 400 005 has come before the Forum for their grievance regarding change of tariff- Residential to Commercial - Amendment thereof pertaining to A/c no. 102-012-869*4.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 29/05/2012 for their grievance of change of tariff from residential to commercial. The complainant has approached to CGRF in schedule 'A' dtd. 12/07/2012 (received by CGRF on 16/07/2012) as no remedy is provided by the Distribution Licensee regarding their grievance. The complainant has requested the Forum to remove the claim debited to them and do not disconnect the electricity supply till the final decision of the case.

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

- 2.0 M/s. Maker Tower has disputed the claim of Rs.44,96,751.45. The consumer M/s. Maker Tower had applied for separate meter for water pump in the year 1992. At the time of sanctioning for separate electric meter, LT I (Residential) tariff was applied. Hence, the account was billed on LT I tariff from the date of installation of the meter.
- 3.0 As per MERC's tariff order of the year 2009, the applicability of tariff to certain class of consumers such as schools, charitable institutes was checked. Hence, premises of consumers were physically inspected to confirm the tariff. During the inspection on 14.01.2010, it is observed that M/s. Maker Tower was using meter for Non-Residential purpose and consumer was billed at Residential tariff. Also it was revealed that, Maker Tower Complete 'E' and 'F' wings are having commercial premises.
- 4.0 Accordingly, a notice under section 126 (i) of Electricity Act 2003 was issued to consumer on 28.4.2010 for unauthorized use of electricity and the tariff changed from LT I to LT II w.e.f. the bill month of June 2010. In response to this, consumer submitted letter dtd. 22.6.2010, stating that they had applied for a separate meter for water pump having load of 76.6 kw with Non-Residential purpose in the year 1992 and not for Residential purpose, vide requisition no.58762 dtd.7th October 1992.
- 5.0 Since, the correct tariff applicable to the consumer was LT II (Non-Residential) and consumer was billed at LT I (Residential) tariff. Hence, to recover the revenue loss, only the difference of both the tariffs was worked out as per tariff applicable during respective years without any penalty, which worked out to Rs. 44,96,751.45. This amount was intimated to the consumer for making payment vide our letter EA/Adm.21/SEA-1/8693/2011 dtd. 2.12.2011. Further, consumer was informed vide our letter dtd. 21.12.2011, that no penalty is charged to them and the bills are only revised as per correct tariff as a case of recovery of difference of two tariffs i.e. Non-Residential to Residential. Consumer had requested for a hearing to place their grievances vide their letter dtd. 28.12.2011. Accordingly, a hearing was arranged on 23.2.2012 in the cabin of Chief Engineer Customer Care. After hearing the consumer, it was informed to the consumer that since consumer has already consumed the electricity for Non-Residential purpose and charged at Residential tariff, consumer is required to pay the difference of two tariffs.
- 6.0 Since consumer did not make the payment, vide our letter dtd. 11.5.2012, we informed the consumer that the amendment claim amount of Rs.44,96,751.45 for the

difference of Non-Residential tariff and Residential for the period 2.2.1993 to 1.8.2010 will be debited in their ensuing electric bill. Subsequently, an amendment claim of Rs.44,96,751.45 was debited in the Electricity Bill of consumer for the bill month of May 2012. The consumer disputed the same and registered a complaint in Annexure `C' form dtd. 29.5.2012 that, an amount of Rs.44,96,751.42 has been billed in excess in the electric bill no.452006217467 without furnishing any details for the same.

- 7.0 Accordingly, `C' form was answered by Energy Audit dept. on 30.5.2012 and informed consumer that it is an amendment claim amount of Rs.44,96,751.45 for difference of Non-Residential tariff and Residential tariff for the period 2.2.1993 to 1.8.2010 which was already informed to them vide our letter dtd. 11.5.2012. Also requested them to pay the same as early as possible. Further, informed that if they wish, suitable installments for the payment of above mentioned amount of Rs.44,96,751.45 may be given to them. Consumer approached Energy Audit dept. for the correction of electric bill, to pay current bill for the month of May-2012. As consumer has disputed the bill amount and willing to pay current bill amount, the electric bill for the month of May 2012 & June-2012 is corrected and given to the consumer .
- 8.0 It is pertinent to mention that in the said amended charges no penalty is charged and the bills are only revised as per the correct tariff. As this is a case of difference of two tariffs the time limit of 6 months is not applicable as per rules in force. The consumer is therefore liable for payment and claim is in accordance with MERC. The supply is used for Non-Residential purpose. Hence, the contention of the consumer is not sustainable.
- 9.0 Consumer's contention that the bill raised is time barred as per Section 56(2) of Electricity Act 2003. In this regard we have to state that Law is clearly laid down by Hon'ble High Court Judge Dr.D.Y.Chandrachud J.(AIR 2007 Bombay 73) in case of Brihanmumbai Municipal Corporation V/s Yatish Sharma & Ors.that the bill will become first "due" only after presentation to consumer and not immediately upon usage of Electricity i.e. `due date starts from the date of service of bill (Brihan Mumbai Municipal v/s Yatish Sharma AIR 2007 Bom 73). In the instant case the payment becomes due when the bill is served on the consumer and bills are issued to the consumer on May 2012 .

Kindly refer following two similar cases:

- A) AIR 2008 Jharkhand 99.

Hon'ble High Court Judge M.Karpaga Vinayagam, C.J. and Amareshwar Sahay J.,
M/s.Tata Steel Ltd. V/s. Jharkhand State Electricity Board & Ors.
L.P.A.No.329 of 2007, D/- 11-10-2007

- B) High Court of Bombay, Writ Petition No.7015 of 2008.

Hon'ble High Court Judge Ranjana Desai and A.A.Sayed J.J.
Rototex Polyester & Anr. V/s. Administrator, Administration of Dadra and Nagar
Havli(U.T.) Electricity Department, Silvassa and Ors.

Cases referred for this Judgement : U.A.Thadani and Anr. V/s. BEST Undertaking and Anr.2000 102(2) Bom.L.R.502, Brihanmumbai Municipal Corporation V/s.Yatish Sharma

and Ors.2007 (3) Bom.C.R.659; Bharat Barrel & Drum Manufacturing Company Private Limited V/s.The Municipal Corporation for Greater Bombay AIR 1978 Bom. 369; H.D.Shourie V/s Municipal Corporation of Delhi AIR 1987 Delhi 219.

- 10.0 Recently, in similar case, CGRF has dismissed complaints of consumer Milan Bar & Restaurants V/s BEST Undertaking.

In view of above, consumer contention cannot be sustained and he may be directed to pay the bill presented to him.

- 11.0 The bills issued by the BEST are accurate since the difference is worked out as per the MERC tariff schedule of two tariffs i.e. Non-Residential & Residential.

Since the consumer has already consumed electricity for Non-Residential purpose and charged at Residential tariff, we humbly request the Hon'ble Forum to uphold BEST's claim of difference in the two tariff rates and issue order to complainant to make the payment of claim amount of Rs. 44,96,751.45.

- 12.0 The citation submitted by consumer to Hon'ble Forum of the case heard at Hon'ble Ombudsman between M/s.Hindustan Corporation ... Applicant V/s BEST Undertaking ... Respondent is not at all applicable to this case and please may not be considered by Hon'ble Forum.

- 13.0 The consumer should not be allowed to change the facts of the case presented in his application.

REASONS :

- 14.0 We have heard Shri. Omprakash Chavan Accountant with Shri. Umashankar, Shri. Prakash Gadkar for the complainant. We have also heard for the Respondent BEST Undertaking Shri. D.N. Pawar, DEEA, Shri. U.Y. Vajandar, DECC(A), Shri. A.Y. Khan, AE, Shri. M.M. Borade, Supdt., Shri. S.N. Bhosle, Ag. CLA and Smt. P.s. Kirtikar, Ag. ALA.

- 15.0 At the outset we observe that the controversy to be redressed with before us, moves in a very narrow compass. Therein this Forum observes that the complainant Co-op. Society Ltd. has *inter-alia* contended that in the month of October 1992 it had applied for a separate electric meter for operating water pump and paid the necessary deposit. Therefore, the Respondent BEST Undertaking can not contend that the electricity was provided for *residential* purpose while the same has been unauthorizdly used for *commercial* purpose. It is the sheer fault on the part of the Respondent BEST Undertaking to charge the complainant society with a *residential* tariff instead of *commercial* tariff and to amend the bill for a period from 02/02/1993 to 01/08/2010 for Rs. 44,96,751.45 and to issue direction to pay the same. Thus the complainant society has been contending that it has been totally ignorant and innocent in paying the electricity bill at *residential* tariff. It was not at all in fault to pay the electricity bill for using water pump by paying electricity charges at a *residential* tariff instead of *commercial*. Under such circumstances the Respondent BEST Undertaking being at fault ought to have proceeded to charge the complainant society with *commercial* tariff prospectively.

- 16.0 The complainant society has further contended that the water pump has been used for all its members / tenants, who keeps on changing. It is therefore not possible for the complainant society to recover the dues for paying the difference in commercial tariff and residential tariff of Rs. 44,96,751.45 as claimed by the Respondent BEST Undertaking for a past period from 02/02/1993 to 01/08/2010.
- 17.0 In counter, the Respondent BEST Undertaking has submitted that as per MERC tariff order of the year 2009, in a process of changing the applicability to a certain class of consumer, the premises of the complainant society was inspected on 14/01/2010. Therein it was revealed that despite the meter no. P086421 was used for *commercial* purpose for operating water pump, the complainant was charged electricity at a *residential* tariff. Therefore, to recover the revenue loss sustained by the Respondent BEST Undertaking, the difference between both the tariffs was worked out as per the applicable tariff for the concerned period i.e. from 02/02/1993 to 01/08/2010 and worked out the difference to Rs. 44,96,751.45.
- 18.0 Accordingly, the complainant society was informed the said difference amount to be paid, vide its letter dtd. 02/12/2010. The Respondent BEST Undertaking further informed the complainant society vide its letter dtd. 21/12/2011 about not levying any penalty and claiming only difference in the *residential* tariff and *commercial* tariff, payable by the complainant. Thus as per submission of the Respondent BEST Undertaking to rectify a bonafide lapse on its part it has claimed a difference between the two tariffs viz. *residential* and *commercial* from the complainant society.
- 19.0 In considered view of this Forum a judgment of the Hon'ble Division Bench of Bombay High Court in case of M/s Rototex Polyester v/s Administrator, Administration of Dadra and Nagar Haveli, Electricity Department, Silvassa (Writ Petition no. 7015/2008), pressed into service by the Respondent BEST Undertaking gives a complete quietus to the controversy raised before this Forum for its redressal.
- 20.0 In the matter before the Hon'ble Bombay High Court the Respondent Distribution Licensee has served a demand notice on the petitioner manufacturer mentioning that the multiplication factor was changed from "500" to "1000" w.e.f. 11/07/2003. However, due to oversight on the part of the Respondent Distribution Licensee, the electricity bill for the period from July 2003 to July 2007 was issued with "500" as a multiplication factor in July 2007 instead of "1000" as a multiplication factor. Therefore, the Respondent Distribution Licensee had revised its bill with "1000" as a multiplication factor for the concerned period and served revised bill of Rs.2,60,17,001.00 on the petitioner.
- 21.0 We thus find that the facts involved in the judgment handed down by the Hon'ble Division Bench of Bombay High Court in the case of M/s Rototex Polyester (Supra), referred to above has been running in parallel and almost identical with the facts which are under consideration of this Forum in the instant matter. In this judgment Hon'ble Division Bench of Bombay High Court has also adverted to the judgments, in a case of (i) *U.A. Thadani v/s BEST Undertaking (2000 vol. 102(2) Bom.L.R. 502*), (ii) *Bombay Municipal Corporation v/s Yatish Sharma (2007 (3) Bom.C.R.659*), (iii) *H.D. Shourie v/s Municipal Corporation of Delhi (AIR 1987 Delhi 219)* and (iv) *Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. v/s Municipal Corporation for Greater Bombay (AIR 1978 Bom 369*).

- 22.0 The Hon'ble Division Bench of Bombay High Court in a case of **M/s Rototex Polyester (Supra)** on advertng to all these judgments referred above drawn a principle that incase a consumer is under-billed on account of clerical mistake due to oversight, the bar of limitation cannot be raised by the consumer. On advertng to the judgment of the Hon'ble Delhi High Court, in a case of **H.D. Shourie (Supra)** in a agreement with it Hon'ble Division Bench has observed that the word "Due" would mean due and payable after "**valid bill**" has been sent to the consumer.
- 23.0 In view of the aforesaid lucid and clear cut law laid down by the Hon'ble Division Bench of the Bombay High Court, this Forum is of a considered view that it has been always open to the Respondent BEST Undertaking to serve an amended bill for correcting any bonafide lapse arising out of oversight on its part, on its the consumer like the one under consideration. Therefore, it does not lie in the mouth of complainant society to contend that it had informed the Respondent BEST Undertaking for providing a meter for *commercial* purpose i.e. for operating water pump and thus was innocent and was not at fault to pay the electricity bill at the rate of *residential* tariff and as the fault lies at the door step of the Respondent BEST Undertaking, therefore not liable to pay amended bill of Rs. 44,96,715.45.
- 24.0 At this juncture this Forum observes that apart from the law position as observed above, the defense put forth before this Forum by the complainant society has been totally false, frail and fragile for a simple reason that, at least from January 2005, in the implementation of Regulation 15.2.4 (d) of MERC (Electricity Supply Code and other conditions of supply) Regulation, 2005, there has been a statutory mandate on the Distribution Licensee to provide the details in the electricity bill to be served on its consumer about the *category of the consumer* i.e. domestic, commercial etc.
- 25.0 Accordingly, this Forum finds such detail being provided by the Respondent BEST Undertaking in every bill served on its consumer, on the reverse of such bill from the year 2005. In considered view of this Forum therefore it is not open for the complainant / consumer to contend being innocent and not aware about his liability to pay the electricity bill at the rate of *commercial* tariff. This Forum observes that despite having aware that the electrical pump has been used for *commercial* purpose, the complainant society found to have been peacefully complacent in paying electricity charges at a lower rate i.e. at *residential* tariff and as such was exploiting an unwitting and bonafide lapse and mistake on the part of the Respondent BEST Undertaking.
- 26.0 We also do not find any iota of merit in a defense raised by complainant society that its various members and tenants go on changing. Therefore, now it is not possible for it to make recovery from them on account of usage of water pump. In this connexion this Forum observes that the privity of contract has been with the complainant society and not with its tenants. The Respondent BEST Undertaking has been totally unaware of the members and tenants and any changes therein of the complainant society
- 27.0 In view of the aforesaid observation and discussion, we find a totally legitimate action of recovery of difference in tariff of Rs. 44,96,751.45, being initiated by the Respondent BEST Undertaking for a period from 02/02/1993 to 01/08/2010 as informed to the complainant society vide its letter dtd. 02/12/2011, which bears an acknowledgement of the complainant society at the foot of it.

28.0 To conclude, the complaint preferred before this Forum, has been devoid of any merit and resulted in simply protracting the liability to pay the legitimate dues of Rs. 44,96,751.45 to the Respondent BEST Undertaking, and that puts a premium on the unjust and unwarranted benefit availed by the complainant society in paying electricity charges at a lower rate. This Forum therefore refrains from allowing complainant society to clear the dues in installments.

ORDER

1. Complaint no. S-(EA)-160-2012 dtd. 17/07/2012 stands dismissed.
2. The complainant has been directed to pay the dues of Rs. 44,96,751.45 as claimed by the Respondent BEST Undertaking within a period of one month from the date of receipt of this order.
3. The Respondent BEST Undertaking is directed to levy the DP and interest as per the procedure in vogue, in the contingency the complainant fails to pay the above dues within the stipulated period mentioned above.
4. The Respondent BEST Undertaking has been directed to report the compliance of this order to this Forum within a period of fortnight there from.
5. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman