

**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. N-G(S)-153-2012 dtd. 25/06/2012**

Shri Mangal Singh .....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent

**Present**

Quorum : 1. Shri R U Ingule, Chairman  
2. Shri S P Goswami, Member  
3. Smt Varsha V Raut, Member

On behalf of the Complainant : Shri. T.J. Patel

On behalf of the Respondent : 1. Shri N.H.S. Husain, AAM(G/S)  
2. Shri S.B. Lande, AECC(G/S)  
3. Shri P.P. Rodrigues, OA(P)

Date of Hearing : 24/07/2012

Date of Order : 23/08/2012

**Judgment by Shri. R.U. Ingule, Chairman**

Shri Mangal Singh, R.No. 306, 3<sup>rd</sup> floor, A-2, Shah & Nahar Indl. Estate, S. Jadhav Marg, Mumbai - 400 013 has come before the forum for Grievance regarding application of wrong tariff and amendment thereof pertaining to A/c no. 677-048-562.

**Complainant has submitted in brief as under :**

1.0 The complainant has approached to IGR Cell on 21/02/2012 regarding application of wrong tariff and amendment thereof pertaining to A/c no. 677-048-562. The

complainant has approached to CGRF in schedule 'A' dtd. 07/06/2012 (received by CGRF on 13/06/2012) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to waive the penalty charged for last 14 years.

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

- 2.0 During the routine investigation on 25.7.2011, it is observed that the electric supply at Shop No.306, A-2, 3<sup>rd</sup> Floor, Shah & Nahar Industrial Estate, S.J. Marg, Lower Parel, Mumbai-13 is being used for commercial activity through meter No.F988139 bearing A/c.No.677-048-562 in the name of Shri Mangal Singh. However, from our record it is noticed that the said account is being billed under residential tariff.
- 3.0 On scrutiny of records and documents available it is observed that Shri Mangal Singh has registered application No.R-010438 on 7.4.1998 for electric supply at said address. Subsequently, meter was installed on 17.4.1998 for said premises. The purpose of electric supply was mentioned as 'commercial', however the tariff made applicable to the said complainant was residential.
- 4.0 In view of above, we have worked out amount towards the difference in tariff from installation of meter i.e. on 17.4.1998 to the date of inspection i.e. on 25.7.2011. The excess amount towards the difference between residential & commercial for the said period is Rs.4,01,903.76
- 5.0 We have asked the complainant to make the payment towards the same as we have charged the complainant difference of tariff for actually units consumed by the complainant during this period. We have also not included any penalty towards the same but charging the amount towards difference in tariff. The complainant, since installation of the meter is using the supply for the commercial activities, however, is being billed under residential tariff. The complainant neither brought the same to our notice nor raised any issue regarding the same.
- 6.0 In view of above, it is requested to ask the complainant, Shri Mangal Singh to pay an amount of Rs.4,01,903.76 towards cost of difference in tariff due to wrong application of tariff for the units actually consumed by the complainant during the period from 17.4.1998 to 25.7.2011.

**REASONS :**

- 7.0 We have heard the representative of the complainant Shri T.J. Patel and for the respondent BEST Undertaking, Shri N.H.S. Husain, AAM(G/S), Shri S.B. Lande, AECC(G/S) and Shri P.P. Rodrigues, OA(P).
- 8.0 Most of the facts in the instant matter have been admitted between the parties. Admittedly the complainant applied for *commercial meter* in the year 1998. The same was sanctioned and installed. After a lapse of 14 years, during a drive

conducted by the respondent BEST Undertaking, it was revealed that despite the meter was applied and provided for *commercial* purpose, however, the complainant was served with a bill for the electricity charges under *residential tariff*, i.e. at the lower rate.

- 9.0 The respondent BEST Undertaking now contends that instead of charging the complainant with commercial tariff, he has been charged with residential tariff sheerly out of bonafide human error. The respondent BEST Undertaking thereafter contends that to correct such error occurred on its part for a period from 17/04/1998 to the date of inspection i.e. 25/07/2011, a difference between the electricity charges has been worked out. The same has been found to be Rs. 4,01,903.76.
- 10.0 As the complainant has paid a less electricity charges of Rs. 4,01,903.76 during the said period, therefore he has informed vide letter dtd. 23/08/2011, about the change in tariff i.e. from residential to commercial. Thereafter, he was further informed the difference in tariff amount of Rs. 4,01,903.76 to be paid by him within a period of one month or else to face the disconnection of electricity for nonpayment of the same.
- 11.0 The complainant now appearing before this Forum submitted that as admitted by the respondent BEST Undertaking, the mistake has been on its part and that too carried on by them for a huge period of 14 years. Therefore, it is totally illegal and unsustainable on its part to claim such huge amount of Rs. 4,01,903.76 as a difference in electricity tariff for the said 14 years. The complainant further shows his ready and willingness to pay the difference in tariff at the most for last 6 months as provided under the Electricity Act / Rules, 2003. Accordingly, prayed for granting a relief.
- 12.0 Under such peculiar aforesaid facts and circumstances, a question arises before this Forum, whether the complainant has been liable to pay such difference in tariff of Rs. 4,01,903.76 quantified for a period of 14 years. In our consider view there is nothing wrong on the part of the respondent BEST Undertaking to claim a difference in a tariff amount, albeit the same has been arisen out of a human error on the part of the respondent BEST Undertaking. We accede to the arguments advance on behalf of the respondent BEST Undertaking that such human error has been a bonafide one and admittedly the complainant has used the electricity supplied for *commercial purpose*, therefore he is liable to pay the electricity charges as per the *commercial tariff*.
- 13.0 This Forum however of a view that it would be unjustified and unsustainable on the part of the respondent BEST Undertaking to allow to get continued and unnoticed such human mistake on its part for huge period of 14 years, which has resulted getting the electricity charges payable under commercial tariff swelled and accumulated to the tune of Rs. 4,01,903.76, which has now become unbearable to pay, as urged on behalf of the complainant.
- 14.0 This Forum is of a considered view that despite the respondent BEST Undertaking has been entitled to claim the difference in tariff, but such difference amount should be feasible and within a capacity of concerned consumer to pay. On behalf of the complainant no evidence besides mere words have been submitted in regard to such incapacity to pay claimed amount of Rs. 4,01,903.76. This Forum however, on perusing the electricity bill placed on file by the complainant, proceeds to find out a

**golden mean** to assess the difference in tariff amount which would be feasible and appropriate one on the part of the complainant to pay the respondent BEST Undertaking for using the electricity for commercial purpose.

- 15.0 True, that as urged on behalf of the Respondent BEST Undertaking that the electricity has been a public property and we being custodian, should protect it zealously. At the same time this Forum finds a warrant of justification to whittle down, the charges amount claimed by the Respondent BEST Undertaking, as we find it being not diligent and vigilant in discharging its duties towards the consumer. We find its concerned employees working in a very mechanical and callous way, in respect of such public property.
- 16.0 In the aforesaid observations and discussion we therefore find it would be in proximity of justice to direct the Respondent BEST Undertaking to claim 50% of the claimed difference amount of Rs. 4,01,903.76, that too, payable in installments.
- 17.0 Dissenting view of Mrs. Varsha Raut, Member (CPO):

The material facts of this case, which are not in dispute, can be enumerated as under:

- a) That the Complainant himself had applied for converting his status from Residential consumer to Commercial consumer,
- b) That the concerned Dept of BEST had duly received this application,
- c) That in spite of such written communication from the Complainant, the Department kept on issuing bills in favour of the Complainant on the basis of Residential tariff i.s.o. Commercial tariff for 14 long years,
- d) That the Department has agreed before this Forum that the bills issued by the Department do not indicate in any way whether the tariff charged is residential or commercial.

If the above facts are uncontroverted facts, then the fault singularly lies with the Respondent department including its internal system. It is shocking to know that the Department keeps on issuing the electricity bills to the Complainant on the basis of residential tariff for 14 long years in spite of the Complainant having requested for change of status from Residential to Commercial consumer, and there is no system in its place which can detect such administrative lapse. The BEST, being the statutory public body, is expected to have its internal and external audit system in its place. Are we to understand that the internal controls in the BEST Undertakings are so weak that they cannot trace such gross irregularity for 14 long years?

I cannot agree even for a moment that such gross dereliction of duty on part of BEST staff which also amounts to gross negligence continuing for 14 long years can be covered up by saddling the entire outstanding amount of 14 year on the innocent consumer who himself had asked for conversion from residential to commercial status. This, according to me, is against public policy. Even the billing system of the BEST appears to be faulty in as much as the bill fails to prominently indicate whether the consumer is being charged Residential, Commercial or Industrial tariff. Just a little

imagination of issuing bills of different colours to different categories of consumers and prominently mentioning its category on the Bills could have avoided all this problem. One needs to be sensitive enough to imagine the state of mind of the consumer who is slapped with a bill showing arrears for last 14 years!

However, after all said and done, the issue boils down to (a) whether BEST is legally entitled to recover arrears for last 14 years? (b) If so, should it be recovered from the complainant who is admittedly not at fault or from the concerned staff/officials who are undoubtedly responsible for such gross administrative lapse? Based on the decided case law answer to question (a) can be given in affirmative. Thus BEST is entitled to recover the arrears for last 14 years, may be even with interest. But then should it be recovered from the consumer who is not at fault? The answer is plain and simple NO. The reasons for this answer are quite obvious. If the consumer is made to pay for this arrears amount of 14 years, the errant staff/officials are bound to go scot free in spite of their gross negligence in issuing bills with residential tariff. In one stroke it will amount to penalizing the innocent and protecting the errant staff/official. Secondly, there is an issue of administrative accountability. If the staff/officials, who are paid their salaries to discharge their duties diligently, fail and neglect to discharge this duty diligently and thereby subject the undertaking to financial loss, who should make good this loss?

Obviously not the consumer who is not at fault. It is obvious, that one who makes mistakes, pays for it. The principle of individual accountability of an employee in the state/public undertaking has, by now, been well established with the Supreme Court's judgment in "Lucknow Development Authority v/s. M K Gupta".

To quote: "In *Rookes v. Barnard*<sup>14</sup> it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bonafide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness.

An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook."

The order further states , "*When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is,*

*therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.*

In view of the above situation, I honestly feel that the Bill raised by the Respondent BEST Undertaking to recover the arrears of last 14 years from the Complainant be cancelled and the amount involved may be recovered from the responsible employees/officials of the Undertaking.

- 18.0 In the aforesaid facts and circumstance by majority view, we proceed to pass the following order:

**ORDER**

- 1.0 Complaint no. N-G(S)-153-2012 dtd. 25/06/2012 stands partly allowed.
- 2.0 The respondent BEST Undertaking has been directed to recover 50% of the difference amount of electricity charges claimed against the complainant.
- 3.0 The respondent BEST Undertaking has been further directed to allow the complainant to pay such electricity charges in 12 equal monthly installments.
- 4.0 The respondent BEST Undertaking has been directed to report the compliance of this order within a period of one month there from.
- 5.0 Copies be given to both the parties.

(Smt Varsha V Raut)  
Member

(Shri S P Goswami)  
Member

(Shri R U Ingule)  
Chairman