

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-95-2010 dt. 2/3/2010

Mr. Avinash Asgekar,

.....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

1. Shri. Avinash Asgekar
2. Shri.Subhash Asgekar

On behalf of the Respondent

1. Shri. D.N.Pawar, DEEA
2. Shri. D.S.Deshmukh, AEEA

Date of Hearing:

7/04/2010

Date of Order :

01/06/2010

Judgment by Shri. R.U.Ingule, Chairman

Mr. Avinash Asgekar, "Avinash", 1st Floor, 720-D.S. Babrekar Marg, Dadar (W), Mumbai – 400 028, approached the CGR Forum for his Grievance regarding giving credit for faulty meter causing high bill of A/c No.200-022-523-7. He has prayed to give credit for whole defective meter period instead of 3 months period considered by the respondent while giving credit.

Complainant's contention in brief are as under

1. Complainant Mr. Avinash Asgekar, has approached the Internal Grievance Redressal Cell of respondent BEST on 17/12/2009 for redressal of his Grievance regarding giving credit for faulty meter causing high bill on A/c No.200-022-523-7.
2. In response to his grievance the IGR Cell of the Respondent vide letter dtd. 24/12/2009 has informed that the credit calculated for 3 months is in order & is as per clause no. 15.4.1 of MERC (Electric Supply Code & Other Conditions of Supply) regulations, 2005.
3. Unsatisfied by the reply of respondent's IGR Cell, complainant approached CGR Forum in Schedule 'A' format on 26/2/2010 and requested to give credit for whole defective meter period instead of 3 months period considered by the respondent while giving credit.
4. Complaint submits that the defective meter was replaced after a period of 5 months from the date of noticing the defect but credit is given for 3 months. Thus injustice has been caused to him.

In counter Respondent, BEST Undertaking has submitted its contention inter alia as under

5. Respondent submits that meter no. P 991586 was installed at the premises of Mr. A.T. Asgekar on 28/5/2003.
6. Billing on meter no. P 991586 was on actual with CMRI (Common Meter Reading Instrument) till the date of replacement i.e. 16/2/2009. As per consumer's complaint for high billing vide letter dtd. 26/12/2008, same meter was tested on 6/1/2009 at site and found 476.46% fast.
7. The case of meter no. P 991586 was referred to Vig. Dept. for vigilance clearance on 9/1/2009. Vigilance clearance was received on 5/2/2009.
8. Meter no. P 991586 was replaced by new meter no. P 080246 on 16/2/2009.
9. Official testing of the defective meter was first scheduled on 4/5/2009. However, as the complainant failed to remain present on the scheduled date the defective meter was officially tested in the laboratory on 5/6/2009 in the presence of consumer and findings were explained to complainant.
10. Subsequently, as per the Clause 15.4.1 of MERC (Electric Supply Code & Other Conditions of Supply) Regulations, 2005, the bills were amended for 3 months prior to date of replacement i.e. 18/11/2008 to 16/2/2009 on the basis of correction factor 0.17 based on 476.46% fastness of the meter no. P 991586 as per site testing results.
11. The net credit of Rs.1,86,126.38 was effected in the month of August 2009 in complainant's electricity bill. Meanwhile the bills were manually corrected till the effect of credit in the bill. Also the delayed payment charges and interest on arrears for the period 18/11/2008 to 1/8/2009 is calculated to Rs.19,879.07 (i.e. Rs.8,676.72 delay payment charges + Rs.11,202.35 interest on arrears) was effected in complainant's bill in the month of February 2010.
12. Meanwhile in the month of December 2008, complainant raised high bill dispute and bills were manually corrected from December 2008 to August 2009 (effect of credit in the A/c).
13. Also, the matter was explained personally to complainant whenever he visited to respondent department.
14. Complainant has requested to amend the A/c for the period 1/9/2008 and give credit for 5 months i.e. 1/9/2008 to 16/2/2009 (date of defective meter to date of replacement).
15. Complainant's request to amend the A/c for period of 5 months cannot be considered as the amendments were worked out for 3 months prior to replacement of defective meter as per the clause 15.4.1 of MERC (Electric Supply Code and Other Conditions of Supply regulations 2005).
16. Respondent has issued bills based on the actual consumption recorded by CMRI (common Meter Reading Instrument) meter no.P991586 for the period 1.9.2008to 16.2.2009.
17. Rise in consumption is observed from 1/9/2008 and the consumer has made the payment of the same. However, the consumer has raised high bill dispute in the month of Dec-2008.
18. Amendment done by the respondent for the defective meter no.P991586 is in order.

REASONS

19. We have heard the complainant Shri. Shri. Avinash Asgekar & Shri.Subhash Asgekar and learned representative for the respondent Undertaking Shri. D.N.Pawar, DEEA & Shri. D.S.Deshmukh, AEEA. Perused papers.
20. The complainant consumer contends about improper high rise in the consumption of electricity started from 1/9/2008, shown by his meter no. P991586. However, we find that the complainant has raised the said grievance about the alleged sudden rise in consumption of electricity units by addressing a letter dtd. 26th December 2008, which the respondent BEST Undertaking received on 29th December, 2008. We further find that in a response to the said grievance raised by the complainant, the respondent BEST Undertaking has tested the said meter at site on 6/1/2009 and replaced the same with the correct meter no. P080246 on 16th February, 2009. Admittedly the meter no. P991586 was found to be fast by 476.46% requiring a correction factor of 0.17.
21. The complainant in the instant matter claims amendment and correction of his bill, from the date the said meter developed a defect in recording consumption of electricity. While the respondent BEST Undertaking has amended the electricity consumption bill for a period of 3 months prior to the date of replacement of a new meter bearing no. P080246, on 16th February, 2009.
22. We find that while amending the bill of the complainant for a period of 3 months preceding or prior to 16th February 2009, the date on which a defective meter was replaced, the respondent BEST Undertaking has taken a recourse to regulation no. 15.4.1 provided under the MERC (Electricity Supply Code and other condition of supply) Regulation 2005. As we find the fate of the instant matter hinges on the interpretation of the said regulation 15.4.1. We therefore find it expedient to reproduce the relevant portion of the same and it runs as under :

15.4 Billing in the Event of Defective Meters

15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter alongwith the assessed bill:

23. We thus find that admittedly the meter provided to the complainant consumer was found to be defective by the respondent BEST Undertaking. Explicitly therefore as envisaged under regulation 15.4.1 the respondent BEST Undertaking has been under obligation to adjust an amount of complainant's bill, for a maximum period of 3 months "prior to the month in which the dispute has arisen", in accordance with the results of the test carried out by the respondent. In the instant matter the respondent BEST Undertaking found to have adjusted the complainant's bill for a period of 3 months prior to replacement of a defective meter on 16th February, 2009. We thus find that the respondent BEST Undertaking has proceeded to consider the date 16th February, 2009, being a month in which the dispute has arisen. On the other hand the complainant consumer has been claiming the adjustment of his bill from the date from which the said defective meter started recording erroneously consumption of electricity on higher side.
24. Now it falls for the consideration of this Forum to explore the construction of expression viz. 'the month in which the dispute has arisen' employed in the regulation 15.4.1. To reiterate the respondent BEST Undertaking has been under obligation to adjust the consumer's bill for a maximum period of 3 months prior to such month in which the dispute has arisen.
25. In our considered view the expression 'maximum period of 3 months', makes it abundantly clear that the said regulations expects the consumer to be prompt and vigilant enough to raise the grievance about the defective meter within the said period of 3 months.
26. As per the construction adopted by the BEST Undertaking "the month in which the dispute has arisen", has been considered wherein a defective meter has been replaced. We observe that to allow the respondent BEST Undertaking to take a recourse to such construction may cause a prejudice to the consumer, not contemplated by the said regulation. We are of a considered view that respondent BEST Undertaking may take its own time and may delay the replacement of a defective meter leaving the complainant consumer to pay the charges on higher side for a period more than 3 months. Evidently a benefit of adjustment of bill for a maximum period of 3 months for a consumer, would be at the mercy and desire of the distribution licensee, as the benefit flowing from regulation 15.4.1 would totally depend on the date on which a defective meter has been replaced with a correct one, by the respondent BEST Undertaking. We therefore proceed to hold that the interpretation of the expression 'month in which the dispute has arisen', resorted to by the BEST Undertaking in the present matter has been highly arbitrary and unsustainable one'.
27. We are therefore of a considered view that the expression 'month in which the dispute has arisen' employed in regulation 15.4.1. needs to be construed in the letter and spirit of regulation 15.4.1, being a month in which complainant consumer has raised the grievance with the distribution licensee. Admittedly in the present matter the complainant consumer has raised a grievance, about sudden rise in the consumption of electricity in the meter no. P991586, by addressing a letter dtd. 26th December, 2008 which the respondent has received on 29th December, 2008. We therefore proceed to hold that as contemplated under regulation no 15.4.1 the dispute has arisen between the complainant consumer and the respondent on 29th December, 2008 and not on 16th February, 2009 the date on which the defective meter was replaced with a correct one.
28. At this juncture we find it expedient to advert to a definition of a 'month' provided under regulation 2.1(r) and it runs as under:

(r) "month", in relation to billing and charges, means the English Calendar month or any period of thirty days;

In the facts and circumstances of the matter on our hand we find it compatible and congruous with regulation 15.4.1 to hold the complainant consumer being entitled for adjustment and correction of his electricity bill for a period of 3 months preceding or prior to raising his grievance with the respondent BEST Undertaking on 29th December, 2008. In the net result thereof, we find the complainant consumer being entitled for amendment of his electricity consumption bill for a period of 3 months prior to 29th December, 2008 i.e. from 28th September, 2008 till 29th December, 2009 and thereafter also till the date providing a correct meter viz. 16th February 2009, as the delay to provide correct meter commencing from 29th December 2009, has been at the instance of the Respondent BEST Undertaking.

29. In view of the aforesaid observations and discussion we proceed to pass the following order.

ORDER

1. The complaint no. N-EA-95-2010 dtd. 2/3/2010 stands partly allowed.
2. The respondent BEST Undertaking has been directed to amend and adjust the electricity consumption bill of the complainant consumer in regard to defective meter no. P991586 from 28th September, 2008 to 16th February 2009, as envisaged under regulation no. 15.4.1 and to refund the excess amount paid by the complainant consumer, within a period of 1 month from the date of passing this order and to communicate the compliances to this Forum within the fortnight there from.
3. Copies be given to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member