

		Date	Month	Year
1	Date of Receipt	07	12	2021
2	Date of Registration	13	12	2021
3	Decided on	10	02	2022
4	Duration of proceeding	59 days		
5	Delay, if any.	—		

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. 22799528

Grievance No. D-007-2021 dtd. 13/12/2021

Shri Karan GandhiComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Coram : Shri S.A. Quazi, Chairman

Member

1. Smt. Anagha A. Acharekar, Independent Member
2. Shri S.S. Bansode, Technical Member

On behalf of the Respondent : 1. Shri M.P. Ranavare, Supdt. CC(D)

On behalf of the Complainant : 1. Shri Karan Gandhi

Date of Hearing : 01/02/2022

Date of Order : 10/02/2022

Judgment

- 1.0 The complainant has grievance about high billing in respect of billing period from February-March 2020 to June 2020.
- 2.0 The following facts can be said to be not in dispute.
 - a) The Respondent has been supplying the electrical energy to the premises having address as 922, Floor 9, Plot-39, Parekh Market, Jagannath Shankarseth Marg, Kennedy Bridge, Girgaon, Mumbai - 400 004. The consumer name of this premises is JRD Diamonds bearing a/c no. 867-249-015.
 - b) From March 2019 to January 2020, the bills were given by the Respondent in respect of the aforesaid premises for consumption of 71, 61, 70, 77, 74, 125, 66, 83, 108, 59 and 122 units respectively for these months. The bill for the month of February 2020 was given for consumption of 100 units of electricity. Then from March 2020, the government had announced lockdown to be observed by the public due to Covid-19 epidemic and hence MERC had directed to give average bills based on previous months' consumption and without taking actual readings from meter site. This was continued for some period. Hence, the bills for the months of March, April and May 2020 were given on average basis for 100, 100 and 10 units respectively.
 - c) On 18/06/2020, the Respondent took physical reading from the meter and found it to be 23386 as on 18/06/2020. The previous reading was taken on 19/03/2020 and it was 10268 units. In view of this, the Respondent charged the complainant for the period from 19/03/2020 to 18/06/2020 for consumption of 13118 units by dividing these 13118 units into the bills of April, May and June 2020 in the proportionate consumption of 4901, 4180 and 4037 units respectively. Thus, after adjusting the payment made of average bills of April and May 2020, the Respondent demanded the complainant to pay arrears of dues for April and May 2020 in the bill of June 2020. Thus, according to the respondent, the arrears of April and May 2020 and bill of June 2020 were amounting to Rs.1,14,010/- as shown in the bill of June 2020 and as mentioned by the Respondent in their re-estimated bill calculation period for the lockdown period, produced by the Respondent at Exhibit 'B'.
 - d) On receiving the said bill for Rs. 1,14,010/- in the month of June 2020, the complainant gave the complaint to the Respondent about high billing contending that the consumption during the lockdown period was near about NIL and still the bill is showing consumption of thousands of units which were never consumed. On receiving such complaint, the Respondent's officials visited the site and found that the consumption shown during the aforesaid period was much more than the consumption recorded in the history of consumption for the previous period. Therefore, *prima-facia* the Respondent thought that the correctness of the meter should be checked. Hence, the Respondent by their communication dtd. 31/07/2020, informed the complainant that the meter no. D089553 installed in the premises of the complainant was defective

and therefore the said meter would be replaced by new meter and the amendment would be carried out after meter being replaced. Accordingly, thereafter the meter was replaced by new meter bearing no.D194319 with effect from (w.e.f.) 19/09/2020. The bills for the month of July 2020 to September 2020 were given for Rs.877.63, Rs. 494.11 and Rs.1587.96 respectively, only towards interest and penal charges on arrears. Then the bills from October 2020 onwards are being given on the basis of reading displayed by the new meter installed in the premises. The complainant has not disputed about correctness of the new meter. The consumption for the month of October 2020 is shown as 237 units in the bill.

3.0 The case of the complainant may be stated as under:

- a) The present registered consumer is M/s JRD Diamonds. The premises is purchased by the complainant Shri Karan S. Gandhi from the present registered consumer M/s JRD Diamonds on 27/01/2020. However, the change in consumer name is yet to be effected to the name of the complainant. Therefore, the bills are still coming in the name of M/s JRD Diamonds. The complainant has produced the copies of maintenance bills issued by the society of the building, in support of above version. Thus, the actual consumer is the present complainant i.e. Shri Karan Gandhi and hence, he has filed the instant complaint in respect of the high billing in the period as mentioned above.
- b) The complainant carried out the repairing work in the premises from February 2021 as there was no business being done in the premises due to lockdown on account of Covid-19 pandemic declared by the government from 20/03/2020. The complainant's office was not functioning during the lockdown period and repair work had also been stopped. The repair work in the premises was done with no electric points. There was only one bulb in the entire office as the civil work was to be started.
- c) However, during the said period, the Respondent issued electricity bill for the month of June 2020 amounting to Rs. 1,14,010/-. In the said bill it was shown that the complainant has utilized 4037 units electricity in the one month as shown in the bill of June 2020. Therefore, the complainant made the complaint to the Respondent. Thereafter, the Respondent suspected the meter to be defective and hence the meter was changed in September 2020.
- d) The complainant's premises has no history of consumption of electricity in thousands of units. The electricity bill for the months of February, March, April and May 2020 were respectively for Rs. 1310, Rs. 610, Rs. 1370 and Rs. 520/-. The complainant has paid these bills. Even after the change of old meter, the pattern of electricity consumption recorded by the new meter is not so high. Hence, the complainant disputes the correctness of the electricity bill given in the month of June 2020.
- e) The complainant has submitted that the old meter was checked by the Respondent in their lab but, according to him, the report of the lab is not correct, in view of history

of the consumption as pointed out herein earlier. He has therefore submitted that the complaint be allowed and the Respondent be directed to reduce the electricity bill as per the consumption shown prior to February 2020.

4.0 The Respondent has filed its reply and opposed the grievance application of the complainant. Respondent's case, as stated in their reply and as submitted by their representative, may be stated as under:

a) According to the Respondent, on the complaint of the complainant, the old meter was changed in September 2020. The old meter no. D089553 was checked in the lab of the Respondent on 29/09/2020. The testing was done in the lab in the presence of the complainant and the test report was to the effect that the meter was within permissible limits of accuracy. The Respondent has produced the copy of test report along with their reply at Exhibit 'C'. According to the Respondent, in view of the test report of old meter no. D089553, the consumer is billed as per actual consumption recorded by that meter, as per reading displayed in June 2020. After receiving the lab-test-report the amendment was done and hence, the bill for the month of December 2020 is for Rs.1,38,530.00 including the previous month's arrears of Rs. 1,37,144.52. According to the Respondent, this is in order and this bill is payable by the consumer.

b) For the aforesaid reasons, the Respondent has pleaded in their reply that the present complaint filed before this Forum has no merits and hence it is liable to be dismissed.

5.0 We have heard the submissions of both the parties and noted their submissions as above. In view of the above submissions of the parties and case pleaded by them, the following **points arise for determination**, on which we record our findings as under, for the reasons to follow.

Sr. No.	Points for determination	Findings
1	Whether the demand made by the Respondent to pay the bill for consumption of electricity from billing month February 2020 to the date of replacement of the old meter i.e. 19/09/2020 is correct?	In negative
2	If the aforesaid demand is not correct then what amount the Respondent is entitled to recover from the complainant, for the aforesaid billing period from billing month Feb. 2020 to 19.09.2020 ?	The Respondent is entitled to recover the amount, as may be calculated under second proviso to clause 15.4.1 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulations, 2005 for the disputed billing period from February 2020 to 19/09/2020.

3	What order should be passed?	The complaint will have to be allowed and disposed in terms of the operative order, being passed herein below.
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6.0 We record reasons, for the aforesaid findings recorded on point no. 1 to 3, as under:

- a) It may be noted that from the record of the pleadings and the documents produced by the parties before this Forum, it may be said that in the month of February 2020 itself the Respondent's computerised system, about the meter no. D089553 installed at the premises of the complainant, has observed and recorded that the reading shown in the meter was 12602 and comparing to the earlier months' reading of 10068, the consumption as shown in the month of February 2020, was abnormally high. Therefore, the Respondent did not issue the bill for the month of February 2020 on the basis of this reading but the billing for the month of February 2020 was done on average consumption of 100 units. This was not within the notice of the complainant and the complainant appears to have paid this bill considering the consumption of 100 units. After this, in the month of March 2020, the State Govt. had announced the lockdown to be observed by the public at large due to epidemic of Covid-19. In view of this, the MERC had directed all the Distribution Licensees to avoid taking of actual meter reading from the site. The MERC had directed that the bills be issued to the consumers on the basis of the earlier period's consumption history. Accordingly, the Respondent issued the bills for the month of March, April and May 2020 on the basis of average consumption of previous period. It also appears that the Respondent took reading from meter-site in the month of June 2020. The document titled as "re-estimated bill calculated report for the lockdown period", produced by the Respondent with their reply and marked it as Exhibit 'B', shows that the last reading taken as on 19/03/2020 was 10268 and the reading taken as on 12/06/2020 was 23386. From this, the Respondent inferred that during the period from 19/03/2020 to 12/06/2020, the complainant had utilized 13118 units of electricity and accordingly the bills for the said period i.e. for the month of March, April and May 2020 were calculated by the Respondent and shown in the aforesaid document of re-estimated bill calculated report. In this document, it is shown that the Respondent has calculated the bill for the month of April 2020 (i.e. for the period from 19/03/2020 to 21/04/2020) for consumption of 4901 units, for the May 2020 (i.e. for the period from 22/04/2020 to 20/05/2020) consumption of 4180 units and bill for the June 2020 (i.e. for the period from 21/05/2020 to 18/06/2020) was calculated by showing the consumption 4037 units. The total bill shown as such in the month of June 2020 is Rs. 1,14,010/- after adjusting the amounts paid by the complainant as per the bills, which were issued on average basis for the months of March and April 2020.
- b) It may be noted that the consumption history of the aforesaid consumer prior to the aforesaid disputed period i.e. prior to February 2020 is shown in the documents produced by the Respondent at Exhibit 'A' with their reply. From these documents, it

is noticed that the consumption from April 2019 to January 2020 was not more than 125 units but in February 2020, the reading recorded by the computer system of the Respondent is 12602 as compared to the earlier month's reading 10068. It means that in February 2020 the consumption of 2534 was recorded by the system from the aforesaid old meter no. D089553. This shows that in the month of February 2020 itself it was noticed by the computer system of the Respondent that the meter was defective as it was showing high consumption than the consumption history of previous months. As the bill was not issued on the basis of this reading and the bill was issued only on average basis of 100 units for the February 2020, the complainant paid that amount without noticing the said defect. The complainant noticed this defect only in the month of June 2020 when the high bill was issued by the Respondent on the basis of actual reading taken in June 2020 showing that from March 2020 to June 2020 about 13118 units were consumed. When the complaint was given by the complainant to the Respondent, they also realized that the meter was suspectedly defective and therefore the meter was changed on 19/09/2020.

- c) The Respondent has come with the case that the old meter no. D089553 was tested in the lab in the presence of the complainant. The complainant has not denied his presence at the time of testing but he has denied the correctness of report of testing which is produced with their reply at Exhibit 'C'. On perusal of this test-report, it is noticed in this document that the report is to the effect with the old meter tested in the lab was found OK with regard to accuracy test and status of registered test whereas about testing status it is recorded in this report as "defective". No doubt the accuracy test in this report is OK but if this is to be read with the history of consumption of the previous months i.e. for the period prior to February 2020, and also the consumption history after change of the meter from October 2020 onwards, it would appear that this report of testing cannot be accepted as correct. Another reason to disbelieve this report is that the Respondent has not asked the lab-official to collect billing data from the old meter for the previous period. Had such data been collected by the lab-official from the tested meter at the time of testing, the actual reason for increase in the reading pattern from February 2020 onward could have been noticed. As this has not been done, the aforesaid report of testing conducted by the Respondent in lab cannot be accepted as correct, even though the complainant has not asked for retesting of the meter from other agencies. Thus *prima-facia* the said report of laboratory of respondent is not acceptable and believable to hold that the meter was displaying correct reading during the said disputed period. Therefore we have no option but to decline to accept the correctness of the said test-report. Hence, we decline to rely on the correctness of the said test report.
- d) Having said that the test report of the lab about old meter is not reliable, we hold that the fact remains that the meter was defective. This defect in the meter was first noticed in the February 2020. Therefore, the disputed period of the defective meter is from February 2020 to 19/09/2020, when the old meter no. D089553 was changed and replaced by new meter. The complainant has not disputed the billing after the change of meter. Therefore, the question is whether the demand made by the Respondent on

the basis of the defective meter no. D089553 for the period from February 2020 to 19/09/2020 is correct? As we have held that the test report of meter no. D089553 is not reliable, we hold that the demand made by the Respondent for the aforesaid period from February 2020 to 19/09/2020 on the basis of the reading of the said defective meter is not correct and the Respondent is not entitled to make such demand. Therefore, we have recorded negative findings on point No.(1)

- e) Next question is then to what extent the Respondent is entitled to charge the complainant for the billing period from February 2020 to 19/09/2020. In this regard we have perused the record and also gone through the provisions laid down in clause 15.4.1 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Hereinafter, it shall be referred to as MERC Supply Code 2005) as the aforesaid period from February 2020 to 19/09/2020 is covered by MERC Supply Code 2005 and not by the MERC (Electric Supply Code and Standard of Performance of Distribution Licensees including Power Quality) Regulations, 2021. We, therefore, hold that the clause 15.4.1 of MERC Supply Code 2005 is applicable to the facts of the instant case to determine as to what extent the Respondent is entitled to charge the complainant during the aforesaid period. It is relevant to quote the said provision laid down under clause 15.4.1 of MERC Supply Code 2005 and we quote the same 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.:

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.

- f) In view of the aforesaid provision of clause 15.4.1 of MERC Supply Code 2005, it can be said that this clause deals with billings in three different situations. First situation is contained in the main provision of this clause and it is to the effect that when meter is

defective and test report is acceptable as correct then, in such case, the billing has to be on the basis of the result of the test. Second situation is mentioned in the first proviso to this clause 15.4.1 of MERC Supply Code 2005 and it covers the case of meter of which seal was found broken or damaged. The third situation is contained in second proviso to clause 15.4.1 of MERC Supply Code 2005 and it covers the case of meter which had stopped recording reading/consumption. In the instant case, the meter was displaying abnormally high consumption and therefore respondent replaced it on suspicion of defect in it and then tested it in their lab. However, as the test report of the meter is not reliable, the billing cannot be on the basis of the report that the accuracy was ok and hence this case does not fall under the aforesaid first situation. It is also not the case of meter of which seal was found broken or damaged. Therefore, first proviso to clause 15.4.1 of MERC Supply Code 2005 is also not applicable. As the meter was displaying abnormally high consumption and the test report of the meter is not believable, it will have to be assumed the meter had stopped recording correct reading/consumption and hence, second proviso to clause 15.4.1 of MERC Supply Code 2005 will have to be applied to the facts and circumstances of the instant case. Therefore, we held that the Respondent is entitled to charge the complainant as per second proviso to to clause 15.4.1 of MERC Supply Code 2005 and not more than that. Accordingly, we have answered point no. (2).

- g) In view of the findings recorded by us on point no. (1) & (2), we hold that the complaint will have to be allowed as is being directed in the operative order being passed herein below, in respect of directions to the Respondent to modify the bills and to charge the complainant as per second proviso to clause 15.4.1 of MERC Supply Code 2005. Hence, we have answered point no. (3) accordingly and therefore, we pass the following order.

ORDER

- 1.0 The grievance no.D-007-2021 dtd. 13/12/2021 stands allowed and disposed off in following terms.
- a) The Respondent is directed to modify the bills for the billing period from February 2020 to 19/09/2020 so as to charge the complainant for the said period only as provided in second proviso to clause 15.4.1 of Supply Code 2005 and to issue proper bills to the complainant accordingly.
- b) The Respondent is directed to comply the aforesaid directions within 60 days from the date of receipt of this order.
- 2.0 Copies of this order be given to all the concerned parties.

Sd/-
(Shri. S.S. Bansode)
Technical Member

Sd/-
(Smt. Anagha A. Acharekar)
Independent Member

Sd/-
(Shri S.A. Quazi)
Chairman