

		Date	Month	Year
1	Date of Receipt	01	07	2021
2	Date of Registration	02	07	2021
3	Decided on	25	11	2021
4	Duration of proceeding	146 days		
5	Delay, if any.	86		

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. N-E-435-2021 dtd.02/07/2021

Shri Mohammed N. SiddiqueComplainant

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 Complainant : 1. Shri Laiq Ahmed

On behalf of the Respondent : 1. Shri P.B. Jawale, DECC(E)

Date of Hearing : 09/11/2021

Date of Order : 25/11/2021

Judgment

- 1.0 This complaint/application was received on 01/07/2021 and registered on 02/07/2021 in the office of the Forum. However, due to pandemic of Covid-19, lockdown was declared by the Government from 23/03/2021 onwards and it was extended from time to time and subsequently the guidelines were issued by MERC in that respect. The complainant was not ready for hearing through Video Conferencing. For these reasons, the matter could not be heard for long period. Now the lock down conditions have been relaxed to some extent. Therefore, the matter was fixed for hearing physically on 09/11/2021. Accordingly, the matter was heard on 09/11/2021 and was reserved for passing judgment. Hence, now the judgment is being given. For these reasons the matter could not be decided within the time prescribed by the MERC Regulations. Therefore, the delay of 86 days has occurred in deciding this complaint.
- 2.0 The case of the complainant may be stated as under :
- a) The complainant has grievance about the demand of Rs. 2,37,980.00 made by the Respondent Undertaking as supplementary bill pertaining to period from May 2015 to August 2019 i.e. total for 50 months.
- 3.0 The following facts may be said to be not in dispute between the parties :-
- a) The complainant is the consumer of the respondent under old a/c no. 202-030-058 and new a/c no. 536-359-010 since prior to May 2015. Initially the load sanctioned to the complainant was 22.08 kw for commercial purpose. The complainant was billed from May 2015 to August 2019 as per the tariff of LT-II (A).
- b) The Respondent Undertaking has raised a supplementary bill for additional amount for the period from May 2015 to August 2019 in a month of January 2020. The complainant has opposed the said demand by submitting a complaint in Annexure 'C' on 27/02/2020 to the Respondent's Internal Grievance Redressal Cell (IGRC). The IGRC has not removed the said grievance and therefore the instant grievance application has been filed by the complainant before this Forum.
- 4.0 The case of the complainant, as stated by him in his complaint and documents on record as well as in the oral submissions, made by his representative Shri Laiq Siddique, before this Forum in the course of hearing, may be stated as under :
- a) According to the complainant, he is senior citizen and handicap. He received a bill in the month of January 2020 in which the Respondent Undertaking demanded him to pay Rs. 2,31,686.00 which included an amount of Rs. 2,27,612.00 towards the supplementary bill for the period from May 2015 to August 2019. The complainant has opposed the aforesaid demand of the Respondent in respect of the past period from May 2015 to August 2019 i.e. 50 months.

- b) On his complaint to the IGRC of the Respondent Undertaking, the IGRC has wrongly decided the matter in favour of the Respondent Undertaking. In this regard the complainant has received a letter dtd. 22/06/2021 from IGRC of the Respondent Undertaking. In that letter, it was mentioned that during the aforesaid period from May 2015 to August 2019 incorrect tariff was applied for billing the complainant and after realization of the mistake, the tariff was rectified in the billing month of August 2019 and difference of tariff was adjusted in the billing month of January 2020. In the said letter, IGRC had stated that high bill was due to difference of tariff adjustment. In the said letter, IGRC had also stated that in view of complainant's application and order of Bombay High Court in W.P.no. 1850 of 2013 (BEST Undertaking v/s Maker Tower E & F Premises), the Customer Care Ward of the Respondent Undertaking had put the revised amendment considering the period of two years to Audit Department. However, the Audit Dept. rejected the said proposal and hence the Customer Care Ward of the Respondent Undertaking asked the complainant to pay the aforesaid amount. In the said letter dtd. 22/06/2021, it was stated that the bill amount for the month of June 2021 is Rs. 2,37,980/-.
- c) Being aggrieved by the said decision of the IGRC mentioned in the letter dtd. 22/06/2021, the complainant has approached to this Forum with the aforesaid grievance of high bill etc. He has submitted that the Respondent Undertaking was threatened to disconnect the supply of the complainant on his failure to pay the said demanded amount.

5.0 The Respondent Undertaking has appeared before the Forum and filed their reply. Their case may be stated as under :

- a) According to the Respondent Undertaking, the IGRC of the Respondent Undertaking has rightly decided the grievance application of the complainant for the reasons mentioned in their letter dtd. 22/06/2021 referred and produced with the complaint by the complainant.
- b) According to the Respondent Undertaking for a/c no. 202-030-058 electric meter was installed in the name of the complainant after sanctioning load of 22.08 kw for commercial purpose. As per tariff order it should be LT-II(b) for billing purpose. However, inadvertently the consumer was charged / billed under the tariff LT-II (a) (commercial upto 20 kw) instead of tariff of LT-II (b) (commercial up to 20 to 50 kw) from billing month of May 2015 to August 2019. The tariff was rectified in the billing month of August 2019 and difference of tariff was adjusted in the billing of January 2020. Thus, the bill of January 2020 appears to be high bill but it was due to difference of tariff adjustment.
- c) In respect of the aforesaid billing in January 2020, the complainant lodged the complaint under Annexure 'C' dtd. 27/02/2020 alleging the high bill etc.
- d) The consumer / complainant had applied for reduction of load and accordingly load was reduced to 12 kw and consumer's account was changed to 536-356-010. Divisional Engineer, High Value Consumer, (DEHVC) was requested by DECC(E) vide letter dtd. 04/10/2019 to work out dr/cr amendment for the period from May 2015 to August 2019 i.e. for 4 years and 02 months for a/c no. 202-030-058. The dr/cr was worked out and calculation of Rs. 2,27,612.09 towards tariff difference was effected in the billing month of January 2020.

- e) In order to solve the consumer's grievance, the concerned department of the Respondent had put up a proposal for revising amendment considering the period of two years limitation for recovery of the dues. Along with the proposal, the order of the **Hon'ble Bombay High Court in W.P. no. 1850 of 2013 for BEST Undertaking v/s Maker Tower E & F Premises CHSL and Anr. (supra)** was also enclosed. In the said order / decision the Hon'ble Bombay High Court had held that Distribution Licensee cannot demand charges for consumption of electricity more than two years preceding the date of first demand. It is further submitted by the Respondent Undertaking in their reply that the Audit Dept. of the Respondent Undertaking rejected the proposal. Consequently, the matter was informed to the consumer vide letter dt.22/06/2021 intimating him that the proposal is not approved by Audit Dept. and therefore the complainant / consumer was required to pay the full amount of the said bill i.e. Rs. 2,37,980.00 mentioned in the bill of June 2021. The complainant was also given facility of paying that amount in three installments.
- f) In view of the aforesaid submissions, the Respondent Undertaking has submitted in their reply that in the aforesaid circumstances the complainant is liable to pay the demanded bill.
- 6.0 We have heard the submissions of the representative of the complainant as well as the representative of the Respondent. Their submissions may be noted as under :
- a) The complainant has submitted that the Respondent Undertaking cannot recover the amount from the complainant after a period of four years and two months. He has submitted that, therefore, the Respondent Undertaking is required to be restrained from recovering the said amount from the complainant.
- b) The representative of the Respondent Undertaking has submitted that there was an error in applying the correct tariff from May 2015 to August 2019 and this was realized in the month of August 2019 and thus the calculations were done by applying correct tariff and it was found that the amount of **Rs. 2,27,612.09** was due towards the aforesaid period from May 2015 to August 2019. Therefore, in the month of June 2020 the said amount was added to the current bill of June 2020 and thus in the bill of June 2020 the total amount of **Rs. 2,37,980.00** was demanded. As the complainant had put up the grievance, it is submitted that in view of the complaint of the complainant about high bill as above, the Respondent Undertaking's concerned department put up a proposal for amending the bill so as to restrict the demand for two years arrears only preceding the date of demand. The said proposal was made to the Audit Department in view of the guidelines of Hon'ble High Court in case of **BEST Undertaking v/s Maker Tower E & F Premises CHSL and Anr.** This is a decision of full bench of Hon'ble Bombay High Court in which the two decisions of Division Bench of Hon'ble Bombay High Court were considered and ultimately the full bench of Hon'ble Bombay High Court has given aforesaid decision about limitation of two years mentioned in sub-section (2) of Section 56 of Electricity Act, 2003 (E.A., 2003). The representative of the Respondent Undertaking has also produced copy of the aforesaid decision of Hon'ble Bombay High Court. Then the representative of the Respondent Undertaking has also referred to the case of **Asst. Engineer, Ajmer Vidyut v/s Rehamatullah Khan**. In this decision the Hon'ble Supreme Court has held that the demand for the electricity charges may exceed to two years in case of incorrect billing on account of

incorrect tariff, but recourse to cut off supply cannot be taken to recover dues of more than two years.

7.0 We have heard the submissions of 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 Respondent Undertaking is entitled to take recourse to disconnect the supply u/s 56 (1) of the E.A., 2003 for recovery of the amount of supplementary bill towards arrears of electricity charges for the period from May 2015 to August 2019 i.e. for about 51 months ?	In negative
2	For what period arrears can be recovered by the Respondent Undertaking by taking recourse to disconnection of supply to the complainant preceding the date of demand i.e. preceding January 2020 in view of Section 56 (2) of the E.A., 2003 ?	Only for the recovery of dues of two years preceding January 2020, the Respondent Undertaking can take recourse to cut off supply to the complainant.
3	To what relief the complainant is entitled in this grievance application ?	The Respondent Undertaking is directed to revise the bills so as not to take recourse to cut off supply, for recovery of the arrears of electricity charges from the complainant, beyond the period of two years preceding the date of demand i.e. preceding January 2020 u/s 56 (2) of E.A., 2003.
4	What order should be passed ?	The grievance application is allowed in terms of the findings recorded on point (1) & (3) herein above and as directed in operative order being herein below.

8.0 **We record reasons for aforesaid findings as under :**

a) We have noted the facts of the case as pleaded by the parties and as the documents produced by them on record. These facts are included that the complainant is a consumer prior to May 2015. The complainant has not disputed that he was provided the electricity by the Respondent Undertaking as a commercial consumer and the tariff was approved as LT-II (b). It is also not disputed that the complainant was

charged by applying tariff LT-II (a) instead of LT-II (b) for the period from May 2015 to August 2019. In August 2019 the tariff was rectified accordingly and it was effected in the billing month of August 2019. Then the Respondent Undertaking worked out the dues of tariff for the aforesaid period from May 2015 to August 2019 and the difference of tariff was adjusted in the billing month of January 2020. The said arrears were demanded in January 2020 for the first time.

- b) In the aforesaid facts and circumstances, what is submitted by the complainant is that the Respondent Undertaking is not entitled to raise the supplementary bill for the period from May 2015 to August 2019 in the month of January 2020 because it is beyond the period of limitation two years prescribed in the law. The representative of the Respondent Undertaking has referred to the Full Bench decision of Bombay High Court in the case of **BEST Undertaking v/s Maker Tower E & F Premises CHSL and Anr.(supra)** dtd. 12/03/2019. The representative of the Respondent Undertaking has also referred to the decision of Hon'ble Supreme Court dtd. 18/02/2020 in the case of **Asst. Engineer, Ajmer Vidyut v/s Rehamatullah Khan W.P. No. 1672 of 2020**. In the case of **BEST Undertaking v/s Maker Tower E & F Premises CHSL and Anr. (supra)** the two decisions of Division Benches of Hon'ble Bombay High Court were referred to. In fact, the reference was made to the Full Bench of the Hon'ble Bombay High Court stating that the aforesaid two Division Bench's decisions have given conflicting views about the interpretation of Section 56 (1) & (2) of E.A., 2003. Referring to the provision of Section 56 of E.A., 2003 and also the ratio laid down in the aforesaid two decisions of two Division Bench of the Hon'ble Bombay High Court, the Full Bench of Bombay High Court has held that the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of first demand of that charges. The Hon'ble Full Bench has also held that the Distribution Licensee will have to raise the demand by issuing bill and bill may include the amount for the period of preceding more than two years provided the conditions set out in sub-section (2) of Section 56 are satisfied about continuously showing of the amount as arrears in the bills. The Hon'ble Full Bench has also held that unless and until the preconditions set out in subsection (2) of Section 56 of E.A., 2003 are satisfied about showing the amount continuously as arrears, there is no question of the electric supply being cut off for non-payment of the bill pertaining to the period beyond the two years preceding the first demand.
- c) In the case of **Asst. Engineer, Ajmer Vidyut v/s Rehamatullah Khan (supra)** the following issues were raised before the Hon'ble Supreme Court namely,
- i) What is the meaning to be ascribed to the term "first due" in Section 56(2) of the Electricity Act, 2003.
 - ii) In the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become "first due" ?
 - iii) Whether recourse to disconnection of electricity supply may be taken by the licensee company after the lapse of two years in case of a mistake ?

The facts of the said case include that the bills were raised by the Distribution Licensee against the consumer under the wrong tariff code of 4400 instead of correct tariff code of 9400 for the period from July 2009 to September 2011. On 18/03/2014, the said mistake was realized and therefore the notice was issued on 18/03/2014 mentioning that the amount was payable in view of internal audit conducted by the department for the period from September 2009 towards arrears. On 25/05/2015, the

Distribution Licensee raised a bill demanding payment of Rs. 29,604.00 from the consumer under the tariff code off 9400 for the period from July 2009 to September 2009. The consumer complained to the District Consumer Forum. The matter went up to the Hon'ble Supreme Court and the aforesaid issues were raised before the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that in case of wrong tariff application, the Distribution Licensee can take recourse to any remedy available in law for recovery of additional demand but is barred from taking recourse to disconnection of supply of electricity u/s 56 (2) of the E.A., in respect of the arrears beyond two years preceding the discovery of mistake. The Hon'ble Supreme Court has held in para 7.3 to 9.0 as under :-

“7.3 Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues.

This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act.

7.4 The period of limitation of two years would commence from the date on which the electricity charges became “first due” under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period.

If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the expiry of the limitation period of two years after the sum became “first due”, it would defeat the object of Section 56 (2).

8. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18/03/2014 for the period July 2009 to September 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18/03/2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to

the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. V. State of Madhya Pradesh, this Court held that :-

“Section 17 (1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.”

(emphasis supplied)

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18/03/2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.”

- d) Thus in view of the aforesaid decision of Hon’ble Supreme Court we find that the ratio laid down in that case is applicable to the facts of the present case. In the case before the Hon’ble Supreme Court also mistake was about application of incorrect tariff and in the instant case before us also the Respondent Undertaking has come with the case that there was mistake in billing on account of application of incorrect tariff. In the case before the Hon’ble Supreme Court the period of such incorrect calculation on account of application of incorrect tariff was from July 2009 to September 2011 and demand for dues on application on correct tariff was raised on 18/03/2014 and by then the limitation period of two years u/s 56(2) had already expired and therefore the Distribution Licensee was not entitled to take recourse to coercive measure of disconnection of electricity supply for recovery of additional demand comprising of the period from July 2009 to September 2011. The Hon’ble Supreme Court has held that the Distribution Licensee may take recourse to any remedy available in law for recovery of the said additional demand except disconnection of supply of electricity u/s 56(1) of E.A., 2003.
- e) Applying the said ratio to the instant case, we find that in the present case the arrears are comprising for the period from May 2015 to August 2019 and the first demand for this arrears was made in January 2020 by serving the bill dtd. 22/01/2020. Therefore,

the Respondent Undertaking is entitled to take recourse to the coercive measure of disconnection to supply for recovery of the dues pertaining to the period of two years preceding the date of the first demand i.e. 22/01/2020 and not beyond that period. Accordingly, we have recorded negative finding on point (1) and we have answered point no. (2) & (3) accordingly in the line of these reasons. In view of this, the Respondent Undertaking will have to be directed by this Forum to modify the bill so as to restrict its demand for recovery of the arrears to the period falling within two years preceding the date of first demand i.e. 22/18/2020, u/s 56(2) of the E.A., 2003. Further, the Respondent Undertaking will have to be restrained from taking recourse to the measure of disconnection of electric supply for recovery of any amount of arrears beyond the aforesaid two years preceding 22/01/2020. In these terms the complaint application will have to be allowed and disposed off. Accordingly, point no. (4) is answered. Hence we pass the following order.

ORDER

- 1.0 The grievance no. N-E-435-2021 dtd.02/07/2021 stands allowed in following terms.
- 2.0 The Respondent Undertaking is restrained from taking recourse to the coercive measure of disconnection of supply to the complainant except for recovery of the dues pertaining to the period of two years preceding 22/01/2020.
- 3.0 The Respondent Undertaking is directed to modify the bills accordingly in the light of the aforesaid directions.
- 4.0 In these terms the complaint stands disposed off.
- 5.0 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