

		Date	Month	Year
1	Date of Receipt	14	05	2021
2	Date of Registration	14	05	2021
3	Decided on	09	11	2021
4	Duration of proceeding	179 days		
5	Delay, if any.	119		

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. S-HVC-431-2021 dtd. 14/05/2021

M/s Supreme EnterpriseComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Coram : Shri S.A. Quazi, Chairman

Member

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

On behalf of the Complainant : 1. Shri Priyam Pai

On behalf of the Respondent : 1. Shri Bilal Shaikh

Date of Hearing : 01/11/2021

Date of Order : 09/11/2021

Judgment

- 1.0 This complaint/application was received and registered on 14/05/2021 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 consumer 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 21/10/2021. Accordingly, the matter was heard on 01/11/2021 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 119 days has occurred in deciding this complaint.

- 2.0 The complainant / applicant has grievance about the amount claimed by the Respondent Undertaking to the tune of Rs. 41,61,440.19 under the head of Total Adjustment Amount in the bill for the month of April 2021.

- 3.0 The following facts are not in dispute between parties:
 - a) The complainant / applicant is the consumer of the Respondent Licensee under the a/c no. 102-693-000 since long period. The complainant was getting supply of electricity through CT operated meter no. T81750 with LVCT bank of ratio 200/5, Multiplying Factor (MF) of 40. The billing on this meter was as per MF of 40 up to the billing month of March 2016. The meter was tested on 19/01/2016 and it was found to be defective. This defective meter was replaced by new meter no. T112130 on 23/03/2016 without replacing the LVCT bank. Thereafter, the Respondent Undertaking had been charging the complainant with MF of 30 till 11/2/2020.
 - b) Subsequently the said meter no. T112130 was also reported to be defective and hence the Respondent Undertaking replaced it by new meter no. T1990393 on 11/02/2020. After such change of the meter, the Respondent Undertaking started applying the MF of 40 and accordingly billing is being done w.e.f. billing cycle from March 2020 onward. However, now the Respondent has also demanded the complainant to pay an amount of Rs. 41,61,440.19 on account of short billing, which allegedly accrued due to application of incorrect MF of 30 instead of 40, for the period from 01/04/2016 to 11/02/2020.

- 4.0 The complainant's case, as stated in the grievance application and as submitted by the representative of the Respondent before the Forum, in the course of hearing, may be stated as under:

- a) According to the complainant, it received a letter from the Respondent bearing HVC/AE-HVC/340/2021 dtd. 31/03/2021 stating that the complainant owes an amount of Rs. 41,61,440.19 on account of short billing which allegedly accrued due to application of incorrect MF of 30 instead of 40 for the period from 01/04/2016 to 11/02/2020. The complainant further submits that after the aforesaid letter dtd. 31/03/2021, he had replied the Respondent Undertaking on 01/04/2021 stating that the complainant would not be able to pay the said amount, because the error was on the part of the Respondent/Licensee, in respect of billing and applying incorrect MF of 30 instead of 40, during the billing period from 01/04/2016 to 11/02/2020 and the complainant is not at fault.
- b) Thereafter, the complainant received the in-tune electric bill for the billing month of April 2021. In that bill the aforesaid disputed amount of Rs. 41,61,440.19 was mentioned as recoverable from the complainant under the head of Total Adjustment Amount. The complainant was shocked to receive such a huge amount of bill towards the additional arrears. Thereafter, the complainant submitted the complaint under Annexure-C to the HVC Ward in regard to the complainant's concern. The Internal Grievance Redressal Cell (IGRC) of the Respondent Undertaking has given reply in respect of the said complaint on 06/05/2021. The said reply is annexed with the complaint by the complainant along with other documents including disputed bill of April 2021. The IGRC rejected the complaint of the complainant on unreasonable grounds.
- c) Being aggrieved by the aforesaid stand taken by the Respondent Undertaking and IGRC, the complainant has approached this Forum with the aforesaid complaint application. He has requested to restrain the Respondent from demanding the aforesaid amount from the complainant.

5.0 The Respondent Undertaking has filed reply before this Forum. The case of the Respondent, as stated in the reply and as submitted by the representative of the Respondent before the Forum in the course of hearing, may be stated as under :

- a) According to the Respondent Undertaking, when the meter was changed on 23/03/2016, inadvertently and by mistake, the Respondent Undertaking's officials have started billing by applying MF 30 instead of 40 as mentioned in the report of meter replacement dtd. 23/03/2016. Therefore, thereafter, the billing was done by applying the MF of 30 till 11/02/2020, when the meter no. T112130 was changed and was replaced by new meter T190393. At the time of this replacement of the meter on 11/02/2020, the Respondent Undertaking realized that the mistake had occurred in applying the MF w.e.f. 23/03/2016 till 11/02/2020 and thus instead of MF of 40, the MF of 30 applied for billing the complainant during the aforesaid period from 23/03/2016 to 11/02/2020. Accordingly, the Respondent Undertaking informed the complainant through necessary communication that such mistake has occurred and MF of 40 will have to be applied and necessary amendment in the bills for the period from 23/03/2016 to 11/02/2020 will have to be made. In this regard the Respondent

Undertaking has produced the necessary documents of communication dtd. 11/02/2020, 14/02/2020, 30/03/2021 etc. Accordingly, the Respondent Undertaking has modified or revised the bills and thus, it has come to the conclusion that an amount of Rs. 41,61,440.19 is due against the complainant towards the arrears for the period from 23/03/2016 to 11/02/2020. Accordingly, this amount was debited to the consumers' account of the complainant and this amount was added in the bill for the month of April 2021 which is disputed by the complainant, in the instant grievance application.

- b) According to the Respondent Undertaking, it is entitled to recover the aforesaid dues towards the additional amount which accrued due to mistake occurred in calculating the bills and billing amounts. The learned representative of the Respondent has relied on the decision of Hon'ble Bombay High Court in the case of *M/s Rototex Polysters & Anr V/s Administrator Administration of Dadra & Nagar Havli (U.T.) Electricity Department, Silvassa & Ors dtd. 20/08/2009 in W.P. 7015 of 2008* in which it was held that the limitation period of two years as provided in sub-section (2) of 56 of Electricity Act, 2003, is not applicable in respect of the amount which has become due on account of mistake in the billing. He has also relied on decision of Hon'ble Supreme Court in the case of *M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. dtd.05/10/2021 in W.P. 7235 of 2009* in which also it was held that the Licensee is entitled to recover the amount due after the expiry of two years as mentioned in sub-section (2) of 56 of E.A., 2002 if the amount becomes due because of clerical mistake in the billing etc.

6.0 We have heard the submissions of the parties.

- a) The complainant's partner Shri Priyam Pai was present. He has submitted that it is not disputed that the consumption as mentioned by the Respondent has occurred. However, he has submitted that the miscalculation is on account of the negligence on the part of the Respondent itself and, therefore, the amount cannot be claimed now as it is beyond the period of prescribed limitation. He has submitted that if the complainant is liable to pay the said amount, installment may be granted.
- b) The representative of the Respondent has relied on the aforesaid two decisions and has submitted that the limitation provided under sub-section (2) is not applicable to the amount which has become due to be recovered for reason of any clerical mistake or error in respect of calculation of the billing and such arrears can be recovered after realization of the mistake by modifying the bills. Therefore, he has submitted that the complaint is liable to be dismissed.

7.0 We have heard the submissions of parties and noted their submissions as recorded herein earlier. In view of the above submissions of the parties, 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 Undertaking in the bill of billing month of April 2021, regarding the amount of Rs. 41,61,440.19 under the head of Total Adjustment Amount and towards the arrears for the period from 01/04/2016 to February 2020, is legal and proper?	In Affirmative
2	Whether the complainant is entitled for the facility of installment in paying the due amount? If yes, what necessary directions can be given in this regard?	The complainant is entitled for installment, but only if he makes application to the Respondent and then it shall be for the Respondent to decide, as to in how many installments the complainant shall pay the said dues, as is being directed in the operative order herein below.
3	What order should be passed?	The complaint is liable to be dismissed in respect of grievance about high billing, but with liberty to the complainant to make application to the Respondent for facility to make payment in instalments and with direction to the Respondent to decide thereupon, as to in how many installments the complainant shall pay the said dues, as is being directed in the operative order herein below.

8.0 We record the reasons for aforesaid findings as under :

- a) We have noted the undisputed facts herein earlier. It is not disputed that the meter was changed by the Respondent Undertaking on 23/03/2016 and at that time the site report of meter replacement had a mention about MF 30 instead of 40. In view of this, it is crystal clear that some mistake has occurred by the Respondent Undertaking in applying the correct MF during the billing period from 23/03/2016 to 11/02/2020. It is

also not disputed that on or about 11/02/2020, the meter was again changed and that time it was realized by officials of the Respondent that from 23/03/2016 the incorrect MF of 30 was being applied for billing the complainant instead of MF 40. Necessary communication was made by the Respondent Undertaking to the complainant in this regard. It may be noted that the complainant has not disputed by issuing any reply to the Respondent Undertaking about the incorrect application of MF for billing the complainant during the aforesaid period from 23/03/2016 to April 2020. The complainant is disputing the claim of the respondent on the ground that the claim must be treated as time-barred and that the amount has become due because of negligence of the Respondent and not due to negligence on the part of the complainant.

- b) Probably the complainant is referring the law of limitation laid down in sub-section (2) of section 56 of the Electricity Act 2003. In sub-section (1) of section 56 of the Electricity Act 2003, it is provided that Licensee can disconnect the supply of power to the person if he neglects to pay any charge for electricity supplied to him. Then in sub-section (2) of section 56 of the Electricity Act 2003, the law about period of limitation is laid down by laying down “no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.” Hon’ble Supreme Court in the case of M/s Prem Cottex V/s Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. dtd.05/10/2021 in W.P. 7235 of 2009 and Hon’ble Bombay High Court in the case of M/s Rototex Polysters & Anr V/s Administrator Administration of Dadra & Nagar Havli (U.T.) Electricity Department, Silvassa & Ors dtd. 20/08/2009 in W.P. 7015 of 2008 have interpreted the provisions of section 56 of the Electricity Act 2003. The ratio laid down in both these decisions is that the limitation period of two years as provided in sub-section (2) of 56 of Electricity Act, 2003, is not applicable in respect of the amount which has become due on account of mistake in the billing.
- c) From the facts of the instant case, as noted herein earlier, it is crystal clear that prior to 23/03/2016, the complaint was admittedly charged with MF of 40. Only after 23/03/2016 the MF of 30 was applied for charging him. Therefore, it is clear that it was a mistake, which is realized in or about the month of January or Feb. 2020, when meter was again changed. Thus it is a case of escape billing. In such a case, the bar of limitation of two years mentioned in sub-section (2) of 56 of E.A., 2003 would not be applicable. In this regard the representative of the Respondent Undertaking has rightly placed reliance on the decisions of Hon’ble Supreme Court and Hon’ble Bombay High Court in the cases mentioned supra. We are of the firm opinion that the ratio laid down in these decisions is applicable to the facts of the present case and, therefore, we hold that the Respondent Undertaking is legally entitled to recover the aforesaid amount and it is not debarred, under the Electricity Act, from claiming the aforesaid amount as mentioned in the bill of April 2021. Accordingly, we have recorded affirmative findings for point (1).

- d) In the complaint filed before this Forum the complainant has not requested for any facility of installment in paying the aforesaid due to amount. However, in the course of hearing of submissions of the parties, the partner of the complainant has orally submitted that installment may be granted, if the complainant is liable to pay the said amount. He has not mentioned as to in how many installments he can pay the said amount. However, in the interest of justice and in view of the fact that the amount was not recovered for a long period from 2016, particularly on account of error on part of the Respondent Undertaking, we hold that the complainant is entitled for paying the aforesaid amount in reasonable installments. However, we leave it to the Respondent to grant suitable number of installments if the complainant makes any written application to the Respondent Undertaking. Accordingly, we have answered point (2).
- e) In view of the findings recorded as above on point (1) & (2), we hold that the complaint is liable to be disposed off with certain directions to the Respondent Undertaking about installment, as is being directed in the operative order herein below. Accordingly, we have answered point (3).

9.0 Hence, we pass the following order.

ORDER

- 1.0 The grievance no. S-HVC-431-2021 dtd. 14/05/2021 is dismissed, as far as it is concerned about challenge to the demand of arrears made by the respondent/licensee for the period from 01/04/2016 to February 2020.
- 2.0 The complainant shall be at liberty to make an application to the Respondent Undertaking, within one month from the date of receipt of this order, for reasonable installments for paying the aforesaid amount of bill mentioned in the bill of April 2021 and if such application is submitted by the complainant, the Respondent Undertaking shall grant suitable number of installments for paying the said amount, as it deem fit.
- 3.0 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