

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-GS-348-2018 dtd. 25/01/2018

Deepak Advt. & MarketingComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.V. Fulpagare, Member
2. Dr M.S. Kamath, Member, CPO

On behalf of the Respondent : 1. Shri Shri N.L. Watti, AAM, CC (G/S)
2. Smt. Sneha Ojale

On behalf of the Complainant : 1. Shri Deepak Jadhav
2. Shri Tanmay Jadhav

Date of Hearing : 20/03/2018

Date of Order : 23/03/2018

Judgment by Shri. Vinayak G. Indrale, Chairman

The Proprietor, Deepak Advt. & Marketing, Morya House, A/322, Plot no. B-66 & 67, New Link Road, Andheri (W), Mumbai - 400 053 has come before the Forum for dispute regarding change in tariff amendment amounting to Rs. 4,48,573.38, Proclaim no. 002-000-552 pertaining to a/c no. 545-471-123*1 having electric supply at Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai - 400 018.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 05/10/2017 for Dispute regarding change in tariff amendment amounting to Rs. 4,48,573.38, Proclaim no. 002-000-552 pertaining to a/c no. 545-471-123*1 having electric supply at Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai - 400 018. The complainant has approached to CGRF in schedule 'A' dtd. 24/01/2018 received by CGRF on 24/01/2018 as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee on its grievance.

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

- 1.0 The Proprietor, Deepak Advertising & Marketing came before the Forum regarding his dispute about an amendment amounting to Rs 4,48,573.38 , Proclaim No. 002-000-552 pertaining to A/c 545-471-123*1 having electric supply at Poonam Chambers , Dr. Annie Besant Road , Worli , Mumbai 400 018 towards tariff difference between commercial tariff and Commercial Display (Advertisement and Hoardings) for the period 02/06/2003 to 30/11/2016.
- 2.0 The electric supply is given to the complainant's premises under reference vide requisition No. 60400498 dated 07/05/2003 through meter number N028168 having A/c 545-471-123 from 02/06/2003 for advertisement and hoardings. This account was billed under commercial tariff.
- 3.0 During inspection on 30/11/2016, it was observed that , the electric supply being used for advertisement and hoardings purpose and applied tariff is commercial. After scrutiny it was observed that, inadvertently, from the date of sanctioning / connecting of electric supply, commercial tariff (LT II A) was applied instead of advertisement and hoardings (LT V). Accordingly, the tariff is changed to advertisement and hoardings (LT V) from 16/02/2017.
- 4.0 The complainant was informed vide letter dated 27/02/2017 that," he is being billed for commercial tariff though the supply is used for Advertising and Hoardings purpose. Therefore tariff being changed from commercial to Advertising and Hoarding. His account will be amended to recover the difference of tariff from commercial to Advertising and Hoarding and claim will be served to you in due course." Accordingly Pro Claim No 002-000-552 amounting to Rs 4,48,573.38 towards tariff difference was worked out and informed to the complainant vide letter dated 01/06/2017.
- 5.0 In response to the letter dated 01/06/2017, the complainant has sent notice dated 21/06/2017 through an advocate . This notice was replied vide letter dated 14/08/2017. The proclaim amount of Rs 4,48,573.38 is not yet debited in the bill of the complainant and therefore no delay payment charges / interest was charged to the complaint. The said amount is legitimate and to be recovered from the complainant.
- 6.0 In case of M/s Rototex Polyester V/s Dadra Nagar Haveli Electricity Department and Yatish Sharma's Case Hon Bombay High Court held the stand of recovery where such as clerical errors have been cited and claim amount is recoverable from the complainant.

REASONS

- 1.0 We have heard arguments of the complainant and for the Respondent BEST Undertaking Shri N.L. Watti, AAM, CC (G/S) and Smt. Sneha Ojale. We have cautiously gone through the documents filed by the either parties to the proceedings. The Respondent BEST Undertaking has filed written submission along with the documents marked at Exhibit 'A' to 'E' annexed with Schedule 'A'.
- 2.0 The complainant has vehemently submitted that since beginning he has applied for the electricity connection for advertising and hoarding business and the Respondent after 13-14 years charged amount of Rs.4,48,573.38 as tariff difference from LT-II(a) to LT(V). Thus according to the complainant the claim raised by the Respondent BEST Undertaking by way of letter dt. 01/06/2017 Exhibit 'D' is barred by limitation as per section 56(2) of Electricity Act, 2003. The Respondent BEST Undertaking's officer has submitted that inadvertently as well as due to mistake they have wrongly applied commercial tariff of LT-II(a) and as per tariff booklet approved by MERC correct tariff was required to be charged was LT (V).
- 3.0 The Respondent BEST Undertaking has further submitted that on 30/11/2016 they have personally inspected the premises and made inspection report and thereby they came to know that the correct applicable tariff was required to be applied was LT (V). The Respondent has submitted the inspection report which is at Exhibit 'B'. We have gone through the inspection report in which there is endorsement of taking action u/s 126 of Electricity Act, 2003. But it appears that it was negligent act on the part of the Respondent BEST Undertaking therefore they have dropped the proceedings of Section 126 of Electricity Act, 2003 and demanded the tariff difference of above said amount from the complainant.
- 4.0 According to the Respondent BEST Undertaking the limitation shall start from the date of issue of valid notice of difference of tariff amount, which has been issued by them on 01/06/2017 and therefore the claim is not barred by limitation.
- 5.0 Having regard to the above said submission of both the parties the crux of the matter is that whether the amount of tariff of difference as claimed by the Respondent BEST Undertaking after 13-14 years is legal one and recoverable from the complainant. On this point we wish to observe that the complainant did not dispute the fact that he got connection for business of hoarding and advertisement and correct tariff was required to be applied was LT (V). The complainant also did not dispute the fact of the calculation of difference of amount done by the Respondent BEST Undertaking which is at Exhibit 'E'. The complainant has only submitted that the Respondent BEST Undertaking was most negligent in their duties and therefore he could not make liable to pay the difference of amount.

6.0 Having regard to the above said controversy between the parties we have to see whether the claim is barred by limitation as per Section 56(2) of the E.A., 2003. We think it just and proper to reproduce the Section 56(2) of the E.A., 2003.

1) xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx

2) *Notwithstanding anything contained in any other law for the time being in force, 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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.*

7.0 Considering the wording of Section 56(2) of E.A., 2003, we have to see when such sum became first due. The complainant has submitted that such sum became first due when the electricity is consumed, and the Respondent BEST Undertaking has only right to claim the said electricity dues within two years from the date of consumption. The Respondent BEST Undertaking has submitted that such sum became first due only on the date of issue of valid notice which has been issued on 01/06/2017.

8.0 On this point we have cautiously gone through the judgment delivered by the Hon'ble Bombay High Court in W.P. no. (L 2221 of 2006) ***Shri Awadesh Pandey v/s Tata Power Company as well as judgment in W.P. no. 7015 of 2008 M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli (U.T.)***. After going through the ratio laid down in above said two judgments, it appears that there is a clear conflicts between two division benches of Hon'ble Bombay High Court and issue has been referred to larger bench and yet the decision is pending.

9.0 In view of this aspect we have to see the facts of this case and facts of the above said judgments delivered by the Hon'ble Bombay High Court. After going through the facts of this case, it appears that same are identical with the facts of the case in judgment in W.P. no. 7015 of 2008 of ***M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli (U.T.)***. In ***M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli (U.T.)***, it has been clearly held that the revised bill amount first became due on 09/11/2007 i.e. date of issue of demand notice and in the instant case, demand notice has been issued on 01/06/2017. Therefore the claim is within limitation and in any case it could not be held that claim is time barred by Section 56(2) of E.A., 2003.

10.0 For the above said reasons we arrived at the conclusion that inadvertently the Respondent BEST Undertaking has claimed wrong tariff of LT-II(a) instead of LT(V) and when they came to know this fact on inspection, they have rightly claimed the difference of amount from the complainant. It appears that due to this mistake on the part of the Respondent BEST Undertaking the complainant is himself benefited as he required to pay less electricity charges as per commercial tariff LT-II(a) and not LT (V). If view from this angle we hold that the Respondent BEST Undertaking is

entitled to recover the tariff difference from the complainant as electricity is public property. Law, in its majesty be highly protect public property and behoves everyone to respect public property. In the instant case the complainant has consumed electricity for business of advertisement on hoarding and therefore he is liable to pay applicable tariff of LT (V). Thus we do not find any substance in the complaint filed by the complainant. In result we pass the following order.

ORDER

1. The complaint no. N-GS-348-2018 dtd. 25/01/2018 stands dismissed.
2. Copies of this order be given to both the parties.

sd/-
(Shri S.V. Fulpagare)
Member

sd/-
(Dr. M.S. Kamath)
Member

sd/-
(Shri V.G. Indrale)
Chairman