

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-HVC-272-2015 dtd. 09/11/2015.

Shri Faerooq A. Abdul AzizComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.Y. Gaikwad, Member
2. Shri S.M. Mohite, Member CPO

On behalf of the Complainant : 1. Shri Farid Khan

On behalf of the Respondent : 1. Shri D.N. Pawar, DE(HVC)
2. Shri N.N. Thale, AE(HVC)
3. Shri P.S. Waghmare, AO(HVC)

Date of Hearing : 23/12/2015

Date of Order : 14/01/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

Shri Faerooq A. Abdul Aziz, Ground floor, Shop no. 36, Shethwadi chawl, Dharavi Main Rd., 60 feet Road, Chamada Bazar, Dharavi, Mumbai - 400 017 has come before the Forum for the recovery of charges towards tariff difference of LT II (a) to LT II (b) tariff for 31294 units for the period Jan.2010 to Feb.2010 and electricity charges for 17490 units consumed in the Mar.2010 pertaining to A/c no. 202-028-989.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 10/07/2015 for debit note of Rs. 2,32,254.90 passed on 04/06/2015 for tariff difference for period January 2010 to February 2010 and electricity charges for the month of March 2010 pertaining to A/c no. 202-028-989. The complainant has approached to CGRF in schedule 'A' dtd. 03/11/2015 (received by CGRF on 03/11/2015) as he was not satisfied by the remedy provided by the IGR Cell Distribution Licensee regarding his grievance.

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

- 2.0 The Complainant Shri Faerooq A. Abdul Aziz has come before the Forum disputing for his dispute regarding recovery of Rs.2,32,254.90 towards tariff difference of LT II (a) to LT II (b) tariff for 31,294 units for the period Jan.2010 to Feb.2010 and electricity charges for 17,490 units consumed in the Mar.2010 pertaining to consumer account 202-028-989.
- 3.0 During vigilance inspection on 05/11/2009, it was observed that the maximum demand (MD) of the complainant's premises was 37 kw. On the other hand the sanctioned load was 11 kw. As per applicable tariff schedule the complainant consumer was supposed to charge as per LT II(b) tariff as his MD was 37 kw.
- 4.0 Earlier complainant's meter no. M019366 was not TOD compatible. Hence, meter no. M019366 was replaced by meter no. P082438 (TOD compatible) on 19/03/2010. It was further observed that the consumer was charged as per LT II(a) tariff instead of LT II (b) for 31,294 units for the period Jan.2010 to Feb.2010 and not charged for 17,490 units consumed in the billing month Mar. 2010.
- 5.0 Necessary debit / credit adjustment for 31,294 units consumed in the period January 2010 to February 2010 to recover tariff difference between LT II (a) to LT II (b) and under charged for 17,490 units in bill month March 2010 as per LT II b tariff is worked out amounting to Rs.2,32,254.90.
- 6.0 The said amount was debited in billing month May 2015 and informed to the complainant vide letter dtd. 04/06/2015. The complainant has disputed the same. The debited amount of Rs.2,32,254.90 is in order and payable by the consumer.

REASONS

- 7.0 We have heard the arguments of representative of the complainant Shri Farid Khan and for the Respondent BEST Undertaking Shri D.N. Pawar, DE(HVC), Shri N.N. Thale, AE(HVC), Shri P.S. Waghmare, AO(HVC). Perused the documents filed by the complainant along with the Annexure and documents filed by the Respondent BEST Undertaking exhibit 'A' to 'H' along with written statement.
- 8.0 The complainant has made grievance in his case that the debit note passed by the Respondent BEST Undertaking on 04/06/2015 for the period 01/01/2010 to 01/03/2010 is barred by limitation. The complainant in his own word has filed the complaint

which is at pg. 33/C wherein he has made grievance that how he can pay the claim of year 2010 in the year 2015. We have carefully gone through the written statement filed by the Respondent BEST Undertaking wherein they did not whisper a single word as to why there was a delay of five years in passing the debit note. In written submission they have contended that during vigilance inspection on 05/11/2009 the consumer's Maximum Demand (MD) was found 37 kw against the sanctioned load of 11 kw and therefore the complainant is liable to pay difference between tariff i.e. LT-II(a) to LT-II(b). The amount of difference of tariff comes to Rs. 30,900.00. According to the Respondent BEST Undertaking in bill for the month of March 2010, meter consumption reading was from 98337 to 115826 (i.e. 17490 units) was not charged under LT-II(b) so they have included the electricity charges for the said units in the debit note. From the written statement filed by the Respondent BEST Undertaking it is crystal clear that they have passed the debit note for difference of LT-II(a) to LT-II(b) from January 2010 to February 2010 and claimed bill of 17490 units for the month of March 2010 from the complainant and claimed Rs. 2,32,254.90 by passing debit note on 04/06/2015.

- 9.0 It is admitted fact that the Respondent BEST Undertaking officials very well knew the fact that the complainant was enjoying more energy than that of sanctioned load as vigilance inspection was done on 05/11/2009. It means they had knowledge about the fact that they have to charge difference of energy charges as well as charge the bill for the month of March 2010 when meter was replaced. They did nothing since 05/11/2009 and on one fine morning without explaining any cause for delay has passed the debit note on 04/06/2015. This action of the officials of the Respondent BEST Undertaking is not at all warranted and on the contrary it is lethargic act on their part that too not to claim energy charges for the period of five years inspite of vigilance inspection on 05/11/2009. It is not out of place to observe that the concerned officials were more negligent in performing their duties and over looked the losses which would be sustained to the Respondent BEST Undertaking.
- 10.0 The representative of the complainant has vehemently submitted that the claim of the Respondent BEST Undertaking is barred by limitation as per section 56(2) of the Electricity Act, 2003. We think it just and proper to reproduce the same.

Section 56(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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

In Section 56(2) it has been mentioned that no sum due from any consumer under this section shall be recoverable after the period for two years from the date when such

sum becomes first due unless such sum has been shown continuously recoverable as arrears of charges for electricity supply and the Licensee shall not cut off the electricity. In view of this legal position coupled with the fact that there is no explanation given by the Respondent BEST Undertaking for making the claim after five years and therefore this case will not be covered by the well known ruling of *M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli (U.T.), Division Bench of Bombay High Court (W.P. No. 7015 of 2008)*. In the absence of any explanation given by the Respondent BEST Undertaking, the act of the Respondent BEST Undertaking for not taking action for five years cannot be held as arithmetical or clerical mistake. In *M/s Rototex Polyester & Anr.* case, it has been held that if there was any clerical mistake or human error or such like mistake in that case limitation shall run from the date of issue of valid notice. In the instant case, nothing has been placed on record by the Respondent BEST Undertaking to show for what reason they have not claimed the difference of tariff for electricity charges as well as bill for the month of March 2010 for about five years. Considering the date of vigilance inspection i.e. 05/11/2009 it was expected from the Respondent BEST Undertaking to claim the difference of charges of electricity and bill for the month of March 2010 within two years from 05/11/2009.

- 11.0 We have gone through the record more particularly, the letter dtd. 05/09/2015 at pg. 37/C in which the department name is shown as High Value Consumer (HVC). It appears that the complainant was using the electric supply for commercial purpose and therefore he is a High Value Consumer. In such type of HVC it is expected from the Respondent BEST Undertaking to show more diligence and promptness with a view to see the welfare of the BEST Undertaking. In this case it appears that Vigilance Department has recovered the penalty of Rs. 2,04,408.00.
- 12.0 From the record, it is crystal clear that when vigilance inspection was done on 05/11/2009 it was expected from the Respondent BEST Undertaking to change the meter at least within eight days and to file the claim for the period required for changing the meter. It reveals that the Respondent BEST Undertaking required four months to replace the old meter with new meter no. P082438. It is also lethargic act on the part of the officials of the Respondent BEST Undertaking.
- 13.0 Having regard to the above said discussion we come to the conclusion that the claim of debit note of Rs. 2,32,254.90 passed on 04/05/2015 for the period from 01/01/2010 to 01/03/2010 is barred by limitation as per Section 56(2) of E.A., 2003 as there is no explanation given by the Respondent BEST Undertaking for delay of five years in passing the debit note. Thus the complaint deserves to be allowed.
- 14.0 Before parting to pass the final order, we may observe that there has been a bit delay in passing the order due to administrative reason. We wish to observe that the officials who were dealing with the billing section pertaining to this consumer seem to be more negligent and lethargic and therefore it is necessary to take appropriate action against them. We think it just and proper to suggest the BEST Undertaking to take appropriate action against the concerned officials as deem fit with a view to

avoid such type of negligence on the part of employer in the future, as BEST Undertaking sustained loss of Rs. 2,32,254.90. In result we pass the following order.

ORDER

1. The complaint No. N-HVC-272-2015 dtd. 09/11/2015 stands allowed.
2. The debit note dtd. 04/06/2015 of Rs. 2,32,254.90 is hereby struck off as claim under debit note is barred by Section 56(2) of Electricity Act, 2003.
3. The Respondent BEST Undertaking is hereby directed to comply with the order and report the compliance within one month from the date of receipt of the order.
4. Copies of this order be given to both the parties.

(Shri S.Y. Gaikwad)
Member

(Shri S.M. Mohite)
Member

(Shri V.G. Indrale)
Chairman