

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. S-HVC-340-2017 dtd. 14/11/2017

M/s Fancy Corporation Ltd.Complainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Dr M.S. Kamath, Member, CPO

On behalf of the Respondent :
1. Shri Bipin H. Kapadia
2. Shri Shailesh Doctor
3. Shri Suresh Dalal

On behalf of the Complainant :
1. Shri S.M. Sakpal, DE(HVC)
2. Shri S.V. Bhat, AAM(HVC)
3. Shri P.S. Vyavahare, AO(HVC)
4. Smt. P.S. Kirtikar, Ag. ALA

Date of Hearing : 03/01/2018

Date of Order : 10/01/2018

Judgment by Shri. Vinayak G. Indrale, Chairman

M/s Fancy Corporation Ltd., 16, 1st floor, Vithaldas Chamber, Mumbai Samachar Marg, Fort, Mumbai - 400 001 has come before the Forum for dispute regarding recovery of charges for tariff difference from LT-II (a) to LT-II (b) for the period from April 2009 to January 2015 pertaining to a/c no. 309-243-005*5.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 02/06/2017 for dispute regarding recovery of charges for tariff difference from LT-II (a) to LT-II (b) for the period from April 2009 to January 2015 pertaining to a/c no. 309-243-005*5. The complainant has approached to CGRF in schedule 'A' dtd. NIL (received by CGRF on 13/11/2017) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee on his grievance.

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

- 1.0 The complainant M/S Fancy Corporation Ltd came before the Forum regarding its dispute about debiting Rs. 2,93,335.95/- in the bill month of September 2016 towards tariff difference between LT II a tariff and LT II b tariff for the period April 2009 to January 2015.
- 2.0 Earlier, electric supply was given to the complainant's premises under reference through meter no. O901998 with sanctioned load 2.8 Kw and meter no. O164970 with sanctioned load of 28 Kw having a/c no. 309-243-177 with commercial tariff. Thus the complainant's total sanctioned load was 2.8 Kw + 28 Kw = 30 Kw.
- 3.0 As this installation is having two meters on same tariff, it was proposed to give electric supply through single meter after combination of wiring and remove the another meter. Accordingly the complainant consumer was informed vide letter having ref. no. CS/IF/A/B/125/2009 dtd. 06/03/2009 and requested him to get wiring combined and to install single main switch of adequate capacity.
- 4.0 In March 2009, while combination of two meters i.e. O901998 and O164970, meter no. O164970 having sanctioned load of 28 Kw was removed and another meter O901998 having sanctioned load 2.8 Kw was retained at site. But inadvertently, the sanctioned load was not updated as 30.8 Kw in the system. Hence, sanctioned load appeared as 2.8 Kw in electricity bill from June 2009.
- 5.0 On 26/10/2009 vide work order no. T/1103308 dtd. 26/10/2009, meter no. O901198 was replaced by meter no. P085802 with sanctioned load 2.8 Kw and new a/c no. 100-028-899 was allotted. Hence sanctioned load of 2.8 Kw started appearing in electricity bill of a/c no. 100-028-899.
- 6.0 While carrying investigation, it was noticed that the complainant consumer's connected load is 7.76 Kw, while sanctioned load is 2.8 Kw. Vide letter dtd. 21/08/2012, the complainant was asked to register an application for extension of load. Vide requisition no. 106337 dtd. 26/09/2012, additional load of 4.96 Kw was sanctioned on existing meter no. P085802 on 11/01/2013.
- 7.0 The Director, Fancy Corporation Ltd. vide their letters dtd. 10/03/2013, 10/06/2013 and 03/09/2013 informed to the Undertaking that their sanctioned load was 30.8 Kw. To support this, he has attached electricity bill for the month April 2008 and May 2008 in which sanctioned load was shown as 30.8 Kw. He further requested to regularize and correct the sanctioned load in the record as 30.8 Kw.

- 8.0 After scrutiny and approval of management, from April 2014 sanctioned load was updated as 30.8 kw and LT-II(b) tariff applied under a/c no. 102-000-250, meter no. P111769. It was observed that sanctioned load on meter no. **P085802** was 2.8 kw and LT-II(a) tariff was applied instead of sanctioned load 30.8 kw with applicable LT-II(b) tariff from March 2009.
- 9.0 Vide requisition no. 186853 dtd. 28/11/2014, the complainant had applied for reduction of load from 30.8 kw to 18.12 kw. Accordingly, on 23/01/2015 consumer's meter no. P111769 was replaced by meter no. N142752 with sanctioned load as 18.12 kw and new a/c no. 309-243-005 is allotted. As sanctioned load is 18.12 kw (below 20 kw) LT-II(a) tariff was applied.
- 10.0 An amendment was preferred for amounting to Rs. 2,93,335.25 towards tariff difference between LT-II(b) and LT-II(a) tariff for the period April 2009 to January 2015. The same was informed to the complainant vide letter dtd. 31/08/2016. The said amount was reflected in electricity bill of September 2016. Duly audited papers of calculation of amendment claim were given to the complainant for its perusal.
- 11.0 The complainant had disputed about debiting of Rs. 2,93,335.25 vide their letter 19/09/2016 and 20/10/2016. The complainant was replied suitably vide letter dtd. 26/10/2016. Not updating connected load at the time of combination of meters in the year 2009 was a human error / clerical mistake which can be corrected at any time and having no bar of limitation.

REASONS

- 1.0 We have heard argument of the representative of the complainant Shri Bipin Kapadia and for the Respondent BEST Undertaking Shri S.M. Sakpal, DE(HVC), Shri S.V. Bhat, AAM(HVC), Shri P.S. Vyavahare, AO(HVC) and Smt. P.S. Kirtikar, Ag. ALA. We have perused the document filed by either party to the proceedings. The Respondent BEST Undertaking has filed written statement which is placed at pg. 3/N to 10/N. Perused the written submission filed by the complainant.
- 2.0 The representative of the complainant has vehemently argued that the claim of tariff difference as claimed by the Respondent BEST Undertaking is for the period of September 2009 to January 2015 and therefore it is barred by limitation as per section 56(2) of Electricity Act, 2003. It is further submitted that in April 2014 the complainant had regularized kilowatt load and irrespective of this fact the Respondent BEST Undertaking has passed amendment bill for the period from September 2009 to January 2015 and therefore the Respondent BEST Undertaking is not entitled to recover the said amount under so called amendment. Against this, the Respondent BEST Undertaking has submitted that it was human error and not sheer negligence on their part and therefore the period of limitation shall start only on the day of issue of valid notice.

3.0 After hearing the argument controversy in this case revolves upon provision of section 56(2) of E.A., 2003. We think it just and proper to reproduce the relevant provision of section 56(2) of 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.

4.0 Considering the wording of section 56(2) of E.A., 2003 we have to see '*when such sum became first due*'. The representative of 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.

5.0 The representative of the complainant has fairly conceded that the Hon'ble Bombay high Court in W.P.no. 10764/2011 Maharashtra State Electricity Distribution Co. Ltd. v/s Electricity Ombudsman and Another has requested the Hon'ble Chief Justice to refer the following issues to the larger bench consisting at least three judges. The issues to be referred as under :

5.1 Whether irrespective of the provisions of section 56(2) of the Electricity Act, 2003, Distribution Licensee can demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

5.2 Whether the charges for electricity consumed become due only after a demand bill issued by the Distribution Licensee and whether the Distribution Licensee can issue a demand bill even for the period preceding more than two years from the date of issuance of demand bill notwithstanding the provision of sub-section 2 of section 56 of the Electricity Act, 2003.

5.3 Which of the judgments of the Division Bench namely Awadesh Pande v/s Tata Power Co. Ltd. reported in AIR 2007 Bombay 52 or the judgment of the Division Bench in the case of Rototex Polyester & Another reported in 2010 (4) have correctly interpreted the provisions of section 56(2) of the Electricity Act.

- 6.0 We have cautiously gone through the judgment in above said writ petitions in which the Hon'ble Justice Shri G.S. Godbole has observed that there is a clear conflict between two Division Bench judges of the Hon'ble Bombay High Court and those two judgments are (i) M/s Rototex Polyester Ltd. v/s Administrator, Administration and Others, W.P. no. 7015/2008 delivered on 20/08/2009 and (ii) Mr. Awadesh S. Pande v/s Tata Power Co. Ltd.& Othrs, W.P. no. 2221 of 2006 decided on 05/10/2006. It is admitted fact that though issues have been referred to larger bench, the decision is pending. In M/s Rototex Polyester Ltd. case the Hon'ble Division Bench has observed that incase the consumer is under billed on account of clerical mistake whether the multiplication factor has changed from 500 to 1000, but due to oversight the department has issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. In case of Mr. Awadesh Pande in W.P. no. (L) 2221/2006 issue was whether power generating company can recover the dues beyond the period of two years. The Electricity Ombudsman has given the finding that the Distribution Licensee has no right to recover the arrears beyond the period of two years. The judgment of the Electricity Ombudsman has been confirmed by the Hon'ble Bombay High Court in Mr. Awadesh Pande case.
- 7.0 Having regard to the above said conflict of opinion which has not been completely decided as the matter is referred to the larger bench, we have to see the judgments referred by the either party to the proceedings. The complainant has referred the judgment in case no. 636 of M/s Saraswat Co-op. Bank v/s MSEDCL, Kolshet Sub Division decided by CGRF, Bhandup and judgment in W.P. no. 10774/11. The Respondent has relied upon the following judgments.
- 7.1 M/s Rototex Polyester Ltd. v/s Administrator, Administration and Others, W.P. no. 7015/2008.
- 7.2 Bombay Municipal Corporation v/s Yatish Sharma W.P.no. 264/06 reported in AIR 2007 Bombay 73.
- 7.3 AIR 2016 Jharkhand 98 M/s Sheo Shakti Cement Industries, Jharkhand v/s Jharkhand Urja Vikas Nigam Ltd., Ranchi & Othrs.
- 8.0 We have cautiously gone through the judgment referred by the complainant in case no. 636 decided by CGRF Bhandup and its facts are distinct from the facts of the case before me and therefore the same is not applicable to the case at hand. As regards another judgment referred by the complainant in W.P. no. 10774/11, the Hon'ble High Court referred the issue for larger bench and yet the said issue has not been resolved. So the above judgments referred by the complainant are not at all useful to decide the controversy.
- 9.0 As regards the judgment referred by the Respondent BEST Undertaking in M/s Rototex Polyester Ltd., it has been held that word "**due**" in this context would mean due and payable after a valid bill sent to the consumer. So ratio laid down in this case law is

applicable to the Respondent BEST Undertaking's case. As regards the judgment reported in AIR 2007 Bombay 73, Bombay Municipal Corporation v/s Yatish Sharma in which the following ratio has been laid down.

“Electricity Act (36 of 2003), Section 56(2) - Recovery of dues - Limitation - Due date of payment - Though liability of consumer arises by consumption of electricity, payment thereof falls due only upon service of bill - Sum can be said to be ‘due’ from consumer only after bill is served upon him - Order of Ombudsman that claim for recovery of electricity charges was barred, passed on ground that arrears for consumption became due immediately on usage of energy, not proper.”

- 10.0 The ratio laid down in this case law is applicable to the case at hand and it supports the contention of the Respondent BEST Undertaking. As regards case law reported in AIR 2016 Jharkhand 98 M/s Sheo Shakti Cement Industries, Jharkhand v/s Jharkhand Urja Vikas Nigam Ltd., Ranchi & Othrs., in this case law it has been held that supplementary bill as correcting by bill raised on account of less multiplying factor - is not barred u/s 56(2) of Act.
- 11.0 Having regard to the above said legal position we constrained to hold that period of limitation under section 56(2) shall start from the date of issue of valid notice. In the instant case valid notice for claiming the amount has been issued on 26/05/2017 and therefore it can be very well held that claim is not barred by section 56(2) of E.A., 2003. The complainant has further submitted that when they have regularized kilowatt in the month of April 2014 and irrespective of this fact the amendment of bill is made for the period September 2009 to January 2015. We have gone through the amendment bill as prepared by the Respondent BEST Undertaking which is at pg. 57 to 71 and it appears that as the complainant has asked for less kilowatt than 20 kw, therefore since February 2015 they have changed the account number and thereby they have carried out the amendment till January 2015. We have cautiously gone through the dr/cr entries in the amendment bill since May 2014 to January 2015 and it appears that amount shown in dr/cr is the same so no prejudice would be caused to the complainant by the amendment.
- 12.0 After going through the record it appears that on 31/08/2016 the Respondent BEST Undertaking has informed the complainant that the amount of Rs. 2,93,335.95 is debited in account for wrongly applied tariff for the period from 01/04/2009 to 01/01/2015. It appears that previously there were two meters in the premises of the complainant having load of 2.8 kw and 28 kw. On 06/03/2009, one meter having 28 kw has been removed and the meter having kw of 2.8 only remained and thereby less tariff was applied due to oversight. For load of 20 kw, the tariff applicable was LT-II(b) but due to human error tariff LT-II(a) was applied. Thus in any case it cannot be held that the claim is barred by limitation as per section 56(2) of E.A., 2003 as it appears that amount first due means after issuing the valid demand notice.

13.0 For the above stated reasons we have arrived at the conclusion that the amendment bill as claimed by the Respondent BEST Undertaking is not barred by the limitation. On the contrary it appears that due to oversight or human error, the Respondent BEST Undertaking has applied wrong tariff and when they came to know about the load they have correctly applied the tariff. Thus we find no substance in the complaint. In result we pass the following order.

ORDER

1. The complaint no. S-HVC-340-2017 dtd. 14/11/2017 stands dismissed.
2. Copies of this order be given to both the parties.

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

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