

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

Representation No. N-HVC-356-2018 dtd. 08/06/2018

The Proprietor, Hindustan Mfg. Co.Complainant

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 S.M. Sakpal, DE(HVC)
2. Smt. M.B. Ugale, A.E.

On behalf of the Complainant : 1. Shri Dilip M. Khilari
2. Shri Prakash Thadani

Date of Hearing : 02/08/2018

Date of Order : 03//08/2018

Judgment by Shri. Vinayak G. Indrale, Chairman

The Proprietor, Hindustan Mfg. Co., 427, Bussa Udyog Bhavan, Sewree (W), Mumbai - 400 015 has come before the Forum for dispute regarding debiting of Rs 6,11,086.03 for the period 30/11/2010 to 31/12/2015 in the bill January 2018 pertaining to a/c 202-000-888.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 10/04/2018 dispute regarding debiting of Rs 6,11,086.03 for the period 30/11/2010 to 31/12/2015 in the bill January 2018 pertaining to a/c 202-000-888. The complainant has approached to CGRF in schedule 'A' dtd. 30/05/2018 received by CGRF on 01/06/2018 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 Proprietor, Hindustan Mfg. Co. came before the Forum regarding dispute about debiting of Rs. 6,11,086.03 towards tariff difference between LT-III (*LT Industry upto 20 kw*) and LT-IV (*Industrial above 20 kw load and upto 100 kw*) for the period December 2010 to January 2016 in electricity bill of January 2018 pertaining to a/c no. 202-000-888. He further stated that disputed matter is 7 to 8 years old.
- 2.0 Earlier electric supply was given to the complainant's premises through meter no. P991553, a/c no. 200-022-455 with sanctioned load 4.59 kw. On 28/08/2012 the complainant had complained about high bill. Accordingly, on 07/09/2012, the complainant's meter was tested and found working within permissible limits of accuracy, with port plate of the meter found broken. Port plate does not affect the kwh consumption i.e. accuracy of the meter. This meter was again tested on 10/04/2013 at site and found within permissible limits of accuracy, port plate found broken, no MRI.
- 3.0 On 04/05/2013, meter no. P991553 was replaced by meter no. P112762 under TOD drive and a/c no. changed to 202-000-866.
- 4.0 Vide requisition no. 236986 dtd. 22/01/2016, the complainant's sanctioned load was increased from 4.59 kw to 21 kw on existing meter no. P112762, a/c no. 202-000-866. In process of updation of new sanctioned load in the electricity bill, the consumer was charged wrongly for the bill of February 2016. The necessary amendment was carried out resulting in net debit of Rs. 20,579.67 and same was reflected in the bill of October 2017.
- 5.0 Inadvertently, the consumer was billed under LT-III (*LT Industry upto 20 kw*) tariff. As per revised tariff schedule approved by MERC, the consumer should have been billed under LT-IV (*Industrial above 20 kw load and upto 100 kw*) tariff. As per available records, the sanctioned load of consumer was 4.59 kw and maximum demand (MD) was above 20 kw. Hence, necessary dr/cr adjustment was carried out for the period December 2010 to January 2016 in electricity bill of January 2018. This has resulted into net debit of Rs. 6,11,086.03 and same was reflected in the electricity bill for the month of January 2018.
- 6.0 Application of wrong tariff is a clerical mistake and same can be corrected at any time. This is held by Hon'ble Bombay High Court in the case of BMC v/s Yatish Sharma & Othrs. reported in AIR 2007 and judgment of Hon'ble Delhi High Court in the case of H.D. Shourie v/s Municipal Corporation of Delhi (AIR 1987). So, the complainant is liable to pay the demanded amount.

REASONS

- 1.0 We have heard the argument of son of the complainant and for the Respondent BEST Undertaking Shri S.M. Sakpal and Smt. M.B. Ugale. Perused the documents filed by either parties to the proceeding. The Respondent BEST Undertaking has filed written statement along with list of documents marked at Sr. No. 1 to 18.
- 2.0 The representative of the complainant has vehemently submitted that debit note and notice dtd. 18/12/2017 issued by the Respondent BEST Undertaking for recovery of Rs. 6,11,086.03 is illegal as the Respondent BEST Undertaking has no right to recover the difference amount of tariff. The Respondent BEST Undertaking has submitted that since December 2010 to January 2016 the complainant has used load of 20 kw and above against the sanctioned load of 4.59 kw. The Respondent BEST Undertaking further contended that the complainant has used more than 20 kw load than that of sanctioned load of 4.59 kw and therefore they have claimed tariff difference of LT-IV (a) and carved out the difference amount by deducting the tariff LT-III industrial below 20 kw. The Respondent BEST Undertaking has submitted that when the complainant has applied for extension of load above 20 kw at that time, they have checked monthly downloaded data of meter of the complainant during the period of December 2010 to January 2016 and they have submitted the said downloaded statement pertaining to meter no. P991553 and P112762 and the said submission is at pg. no. 35/C to 43/C.
- 3.0 After hearing the argument of both the parties and after perusal of the documents the dispute in this case is pertaining to the consumption of more electricity load than that of sanctioned load by the complainant for industrial purpose. The complainant did not dispute the fact of calculations as drawn by the Respondent BEST Undertaking and there by carved out the debit note. The complainant initially disputed as to how and in what way they had download the consumption of load consumed by the complainant through the meter. While hearing the argument we have shown him the statements of monthly downloaded data from the meter of the complainant in PC for the period from December 2010 to January 2016 prepared by the Respondent BEST Undertaking as well as the Respondent BEST Undertaking has shown the readiness to show the downloaded statements in their PC. The representative of the complainant further disputed that how the Respondent BEST Undertaking can claim the amount of Rs. 6,11,086.03 as difference amount of tariff for the period from 30/11/2010 to 31/12/2015 as according to him same is barred by limitation as per Section 56 (2) of E.A., 2003. Against this contention, the Respondent BEST Undertaking has submitted that for the first time they came to know the consumption of more load than that of sanctioned load in the month of December 2015 and in January 2016 the complainant applied for extension of load above 20 kw and so limitation shall run from the date of December 2015.
- 4.0 The Respondent BEST Undertaking has further submitted that as per ratio laid down in *W.P. no. 7015 of 2008, M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli, Silvassa*, in the Hon'ble High Court has

held that the word “*first due*” in Section 56(2) of E.A., 2003 in this context would mean due and payable after a valid bill has been sent to the consumer. Thus, according to the Respondent BEST Undertaking they have served the valid bill to the complainant on 18/12/2017 and therefore the limitation shall run from that date and so claim is within limitation.

- 5.0 We have cautiously gone through the ratio laid down in above referred M/s Rototex Polyester case as well as ratio laid down by Hon’ble Bombay High Court Division Bench in W.P. no. 2221 of 2006 Shri Awadesh Pandey v/s Tata Power Company Ltd. decided on 05/10/2006 and in the above said two cases there is contrary view has been taken by Hon’ble Bombay High Court. In M/s Rototex Polyester case the Hon’ble Division of Bombay High Court held that amount first due means when valid notice is issued, but in Shri Awadesh Pandey’s case, it has been held that charges for a period of two years previous to the demand could be recovered under the provision of Section 56 (2) of E.A., 2003. The Respondent BEST Undertaking has further submitted that the contrary view taken by the Hon’ble Bombay High Court in above said cases has been referred to full bench of Hon’ble Bombay High Court and yet the issue is pending before Hon’ble High Court.
- 6.0 We have cautiously gone through the record and real controversy between the parties and the matter is pertaining to recovery of electricity dues by the Respondent BEST Undertaking for the excessive electricity load consumed by the complainant than that of sanctioned load, this shows that the complainant has really consumed the electricity and there should not be hitch for him to pay the difference of amount of tariff to the Respondent BEST Undertaking. The conduct of the complainant that in the month of January 2016 he applied for extension of load above 20 kw certainly goes to show that he had knowledge that he was consuming more load than that of sanctioned load. Thus, it appears to us that the facts of the case before us and facts of the case in M/s Rototex Polyester are similar and therefore we have applied the ratio laid down in Rototex Polyester and held that the claim is within limitation.
- 7.0 For the above said reasons we do not find any substance in the complaint as it is a case of amount of recovery to electricity charges pertaining to the difference in tariff. Thus the complaint deserves to be dismissed. In result we pass the following order.

ORDER

- 1.0 The complaint no. N-E-356-2018 dtd. 08/06/2018 stands dismissed.
- 2.0 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