

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-311-2016 dtd. 30/11/2016.

Smt. Kalavati DeviramComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.V. Fulpagare, Member
2. Shri S.M. Mohite, Member, CPO

On behalf of the Complainant :
1. Shri Deepak Shah
2. Shri Jatin Henia

On behalf of the Respondent :
1. Shri D.N. Pawar, DE(HVC)
2. Mrs. M.B. Ugale, AE(HVC)
3. Shri P.S. Vyavahare, AO(HVC)

Date of Hearing : 20/01/2017

Date of Order : 30/01/2017

Judgment by Shri. Vinayak G. Indrale, Chairman

Smt. Kalavati Deviram, R. No. 5-6, Ground floor, Premji Bhuvan, 275/289, R.M. Roy Road, Girgaon, Mumbai - 400 004 has come before the Forum for dispute regarding debited uncharged units pertaining to a/c no. 100-024-069.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 19/10/2016 for dispute regarding debited uncharged units pertaining to a/c no. 100-024-069. The complainant has approached to CGRF in schedule 'A' dtd. 22/11/2016 (received by CGRF on 29/11/2016) 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 :**

- 2.0 The complainant Mrs. Kalavati Deviram came before the Forum regarding her dispute about debiting of amount of Rs. 1,70,602.92 towards debit / credit adjustment towards burnt meter amendment pertaining to meter no. P111164 and P087197 for the period 01/06/2013 to 01/12/2013 and meter no. P113046 for the period 01/06/2014 to 26/06/2014.
- 3.0 Electric supply was given to the complainant's premises through meter no. P111164 under a/c no. 100-024-069 from 03/07/2012. On 20/06/2013 meter no. P111164 was replaced by meter no. P087197 as earlier meter found burnt. Further meter no. P087197 found burnt on 07/09/2013, hence replaced by meter no. P113046 on 28/10/2013.
- 4.0 Due to non-updating of meter no. P087197 and P113046 in billing system, the consumer was billed for zero units from June 2013 to November 2013. During the period from 01/06/2013 to 07/09/2013 the consumer was charged for zero units consumption.
- 5.0 From January 2014 to June 2014, the consumer was correctly billed as per consumption recorded by meter no. P113046.
- 6.0 Further meter no. P113046 was found burnt on 26/06/2014 and replaced by meter no. P115101 on the same day. Due to insertion of previous reading during transaction the consumer was billed for zero units for the month of July 2014.
- 7.0 Necessary dr/cr adjustment was carried out for burnt meter amendment towards meter no. P111164 and P087197 for the period 01/06/2013 to 01/12/2013 and meter no. P113046 for the period 01/06/2014 to 26/06/2014, this has resulted in net debit of Rs.1,70,602.92.
- 8.0 The complainant has raised the objection for the same. Vide letter dtd. 07/10/2016 the complainant was informed that, an amount of Rs. 1,70,602.92 will be debited in her account for under charged units for the period from 01/06/2013 to 26/06/2014. The same will be adjusted in the ensuing bills. This has reflected in the billing month October 2016.
- 9.0 In light of case of BMC v/s Yatish Sharma & Others decided by Bombay High Court, a sum can be said to be 'due' from consumer only after bill served upon. In instant case bill was served in the bill of October 2016 for the first time. Hence section 56(2) of E.A., 2003 is not applicable in this case.

REASONS

- 10.0 We have heard the arguments of Shri Deepak Shah who is representative of the complainant and for the Respondent BEST Undertaking Shri D.N. Pawar, DE(HVC), Mrs. M.B. Ugale, AE(HVC) and Shri P.S. Vyavahare, AO(HVC). Perused plethora of documents filed by the complainant along with Schedule 'A' and written submission filed by the Respondent BEST Undertaking along with documents marked at Exhibit 'A' to 'H'.
- 11.0 The representative of the complainant has vehemently submitted that the debit note dtd. 07/10/2016 of Rs. 1,70,602.93 for the period from 01/06/2013 to 26/06/2014 (pg. 1/C) is barred by limitation as per section 56(2), Electricity Act, 2003 and therefore the Respondent BEST Undertaking has no right to recover the said amount under debit note. Against this, the Respondent BEST Undertaking's officer has submitted that they have passed debit note dtd. 07/10/2016 for the above said period has billed for uncharged units. The officer of the Respondent BEST Undertaking has submitted that as per well known ruling of our Hon'ble High Court in case of *M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli, Silvassa in civil petition 705 of 2008*, the payment becomes due when the bill is served on the consumer and therefore it is not barred by section 56(2) of E.A., 2003.
- 12.0 We have cautiously gone through the written submission filed by the Respondent BEST Undertaking and it appears that meter no. P111164 installed on 03/07/2012 got burnt on 20/06/2013 and it has been replaced by meter no. P087197 and same meter has also been burnt on 07/09/2013 within a period of three months and replaced by meter no. P113046 on 07/09/2013. It is the contention that due to non-updating of both the meters i.e. P087197 and P113046 in billing system, the consumer was billed for zero units from June 2013 to November 2013. During this period the consumer was charged only for fixed charges and since January 2014 to June 2014 the consumer was correctly billed through meter no. P113046. It is further contended that again meter no. P113046 was also got burnt on 26/06/2014 and replaced by meter no. P115101 on 26/06/2014. Due to this aspect bill for the month of July 2014 was billed for zero units. According to the Respondent BEST Undertaking, the consumer was billed for accumulated 9339 units in the billing month of December 2013 amounting to Rs. 1,49,978.93 and same has been paid by the consumer. It is the case of the Respondent BEST Undertaking that units chargeable for the period from 01/06/2013 to 01/12/2013 were 19674 and in fact they have charged units for 9339 and therefore the Respondent BEST Undertaking is entitled to get difference of amount of Rs. 1,28,787.97 and for the period from 01/06/2014 to 26/06/2014 units chargeable were 2534 and units charged zero, therefore the Respondent BEST Undertaking is entitled to get difference amount of Rs. 41,854.45. It appears that the Respondent BEST Undertaking has shown the said calculation in para 3.1 of written submission and passed the debit note of Rs. 1,70,602.92.

- 13.0 The representative of the complainant has submitted that the complainant has already paid Rs. 1,49,978.93 as claimed in the bill for the month of December 2013 and the amount which the Respondent BEST Undertaking has claimed by way of alleged amendment is barred by limitation and so not entitled to claim the same. Shri Pawar, the representative of the Respondent BEST Undertaking has wisely tried to impress that they have claimed the amount under debit note as amount for undercharged units, in fact this submission of Shri Pawar is against the record as after going through the record it appears that they have charged the bill for defective meters as per clause 15.4 and 15.4.1 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulation 2005. We think it just and proper to reproduce clause 15.4 and 15.4.1 of above said regulation.

15.4 Billing in the Event of Defective Meters

15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which he dispute has arisen in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill.

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per cl. 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding eh three months prior to the month in which the billing is contemplated.

- 14.0 By Cl. 15.4.1, the Respondent BEST Undertaking was under obligation to get tested defective meters and raise the bill for maximum period of three months to the month in which the dispute has arisen, in accordance with the result of the test. In the instant case no such procedure has been adopted by the Respondent BEST Undertaking and on assuming that the said three meters were defective without testing those meters have claimed the bill so this attitude on the part of the Respondent BEST Undertaking is contrary to the regulation. It appears that they have carried out amount of three burnt meters and claimed amount which is barred by limitation.
- 15.0 As regards the contention of the complainant on the point of limitation as per section 56(2) of EA, 2003, on the face of record more particularly date of debit note and written submission it is crystal clear that the amount under debit note is barred by limitation. It is pertinent to note that the Respondent BEST Undertaking was well

aware the fact of defective meter as well as initial readings of the defective meters and therefore it was expected from them to claim or raise the bills within the period of two years, that has not been done by the Respondent BEST Undertaking and therefore the amount under debit note is barred by limitation.

- 16.0 The Respondent BEST Undertaking has argued that as per well known ruling of *M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli, Silvassa in civil petition 705 of 2008* the period of limitation shall start from the date of issue of valid notice and therefore claim is within limitation. After going through the record in any case it cannot be held that it was human error on the part of the Respondent BEST Undertaking not to recover the said amount from the complainant within two years. On the contrary the record goes to show that the Respondent BEST Undertaking very well knew the fact that the meters were burnt and they have to get tested those meters and charge the amount as per cl. 15.4.1 of Regulation, 2005. After considering the whole record the Forum do not find any force in the submission of the Respondent BEST Undertaking that period of limitation shall run from the date of issue of valid notice on 07/10/2016. The Respondent BEST Undertaking has submitted that in view of ruling reported in AIR 2007 Bombay-73, BMC v/s Yatish Sharma sum can be said to be due from consumer only after bill is served upon him. But in view of decision in Mr. Avdesh Pandey v/s Tata Power Company Ltd. & Others, in writ petition no. (L) 2221 of 2006 of Division Bench, taking contrary view, ratio in Yatish Sharma's case cannot be applicable as there is difference of opinion about as to when period of limitation will start. We apply ratio laid down in Avdesh Pandey case.
- 17.0 Having regard to the above said reasons the Forum comes to the conclusion that the amount claimed by the Respondent BEST Undertaking under debit note dtd. 07/10/2016 is barred by limitation and therefore the Respondent BEST Undertaking has no right to recover the same. It is pertinent to note that the Respondent BEST Undertaking all of a sudden has issued the debit note on 07/10/2016 to the complainant without giving him an opportunity to explain about the same and then they were suppose to pass reason order for recovery of the said amount, that has not been done by the Respondent BEST Undertaking.
- 18.0 In the above said circumstances the Forum comes to the conclusion that the complaint deserves to be allowed in result, we pass the following order.

ORDER

1. The complaint no. S-HVC-311-2016 dtd. 30/11/2016 stands allowed.
2. The debit note dtd. 07/10/2016 passed by the Respondent BEST Undertaking for amounting to Rs. 1,70,602.92 is hereby struck off.
3. The Respondent BEST Undertaking is directed to comply the order within one month from the date of receipt of order and report the compliance thereafter within 15 days.
4. Copies of this order be given to both the parties.

(Shri S.V. Fulpagare)
Member

(Shri S.M. Mohite)
Member

(Shri V.G. Indrale)
Chairman