

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-G(N)-336-2017 dtd. 18/10/2017

Shri Mohd. Nafis ShaikhComplainant

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 K.A. Kulkarni, Supdt. CC(G/N)
2. Smt. P.S. Kekane, AAM, CC(G/N)

On behalf of the Complainant : 1. Shri Mohd. Nafis Khan

Date of Hearing : 22/11/2017

Date of Order : 05/12/2017

Judgment by Shri. Vinayak G. Indrale, Chairman

Shri Mohd. Nafis Shaikh, G/NM/B-581/1, Ground Floor, Kalyan Wadi, Dharavi Main Road, Dharavi, Mumbai - 400 017 has come before the Forum for dispute regarding defective meter amendment amounting to Rs. 1,39,630.00 pertaining to a/c no. 781-410-009 debited in the month of March 2017.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 06/07/2017 for dispute regarding defective meter amendment amounting to Rs. 1,39,630.00 pertaining to a/c no. 781-410-009 debited in the month of March 2017. The complainant has approached to CGRF in schedule 'A' dtd. 16/10/2017 received by CGRF on 17/10/2017) 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 electric supply was given to Shri. Mohd Nafis Shaikh's premises under reference through meter number H084332 for commercial purpose from 10/11/2008 against a/c No 781-410-009. This meter had recorded steady consumption (approx average 400 units per month) from the date of it's installation up to December 2010 . Electric supply was disconnected on 11/01/2011 for the reason non-payment of electricity dues amounting to Rs 23,486.00/-
- 2.0 The electric supply had reconnected on 05/07/2011 through meter number B100478 with initial reading zero vide requisition 17526847. In the month of October 2011, the meter reader had brought as 18252 units. The consumer was not billed for abnormal meter reading recorded by the meter. Hence meter B100478 was tested on site and replaced under mass replacement drive for the reason no display being EMCO make. New meter number F111857 was installed on 22/12/2012.
- 3.0 Newly installed meter number F111857 did not record any consumption from the date of it's installation. During investigation meter number F111857 was found "No Display". Hence meter number F11857 was replaced by meter number A126330 on 21/09/2013. The consumer was billed on estimated average of 137 units per month for the period (22/12/2010 to 21/09/2013). Meter number F118547 was tested in laboratory on 22/10/2013 and found, " no display, no communication & no pulse output, accuracy can't be taken."
- 4.0 Meter number A126330 had recorded consumption between 700 units to 1280 units per month to for the period 21/09/2013 to Nov 2014. This meter had stopped recording consumption from August 2016. On 07/10/2016 meter number A126330 was tested on site and found no display. Hence meter number A126330 was replaced by H161408. The consumer was billed for 200 units per month for the period August 2016 to October 2016. Meter number A126330 was tested in laboratory on 27/02/2017 and found , " display shows error code 0000131, NO Communication, meter accuracy can't be taken."
- 5.0 Necessary dr/cr was preferred pertaining to meter no. B100478 for the period of 3 months (October 2012 to December 2012) and for the meter no. F111857 for the period of 3 months (July 2013 to September 2013) by considering average consumption recorded by meter no. A126330 of 936 units per month for the period November 2013 to November 2014, this has resulted in net debit of Rs. 76,745.82 and same was debited in the billing month March 2017.
- 6.0 An amendment was preferred through system generated programme for meter no. A126330 for the period August 2016 to October 2016 on average consumption of 1495 units per month recorded by the meter no. A126330 for the period July 2015 to July

2016. This has resulted in net debit of Rs. 62,004.21. This claim was debited in the billing month of March 2017.

REASONS

- 1.0 We have heard argument of Shri Farid Khan, representative of the complainant and for the Respondent BEST Undertaking Shri K.A. Kulkarni, Supdt. CC(G/N) and Smt. P.S. Kekane, AAM, CC(G/N). Perused the documents filed by either parties to the proceeding. Perused the written statement filed by the Respondent BEST Undertaking along with documents marked at Exhibit 'A' to 'H'.
- 2.0 The representative of the complainant has vehemently submitted that the amendment of three defective meters as carved out by the Respondent BEST Undertaking barred by limitation as dr/cr note passed is for the period 2011-2016. The Respondent BEST Undertaking has submitted that at relevant time the work of computerization of billing was in progress and there was shortage of electric meters and due to heavy work load there was delay in replacement of meter as well as for carrying out the amendment. The Respondent BEST Undertaking has submitted that the period of limitation shall start from the date of first demand notice which is termed as amount first due.
- 3.0 Having regard to the above said submission of the parties and document placed by them before us, it reveals that the dispute revolves in respect of amendment bill carried out by the Respondent BEST Undertaking in respect of three defective meters which is given in below tabulated format.

Sr. No.	Meter no.	Event	Remark
1	H084332	Installed on 10/11/2008	
2	H084332	Removed on 11/01/2011	Non-payment and dish. cheque
3	B100478	Installed on 05/07/2011	Valid reconnection requisition ID 17526847
4	B100478	Replaced on 22/12/2012	No Display
5	F111857	Installed on 22/12/2012	Estimated billing upto 21/09/2013 (No Display)
6	F111857	Replaced on 21/09/2013	By meter no. A126330
7		Two defective meters amendments worked out through dr/cr (3 months each)	Dr/Cr worked out on new meter average of 936 units per month against consumption of meter no. A126330
8		Claim amount of two defective meters B100478 & F111857 was worked out to Rs. 76,745.82	Debited in consumer bill of March 2017
9	A126330	Replaced on 09/10/2016 by meter no. H161408	No Display
10		System generated amendment of defective meter no. A126330	Rs. 62,004.21 as per MERC Regulation 15.4.1 debited in bill of March 2017.

4.0 The Respondent BEST Undertaking submitted that two defective meters B100478 & F111857 for which amendment is worked out on the basis of consumption recorded as average of 936 units per month and it is worked out to Rs. 76,745.82. As regards amendment of defective meter A126330, the Respondent BEST Undertaking carved out dr/cr of Rs. 62,004.21 as per MERC Regulation 15.4.1 on the basis of system generated amendment.

5.0 In view of above contention of the Respondent BEST Undertaking, we have to see whether the amendment of two meters bearing no. B100478 & F111857 is proper and whether it is strictly in accordance with Regulation 15.4.1. We think it just and proper to reproduce the said Regulation 15.4.

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 the 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 clause 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 the three months prior to the month in which the billing is contemplated.

6.0 If we peruse the above said Regulation, it never allows the Respondent BEST Undertaking / Distribution Licensee to carry out amendment on new replaced meter readings average. The best reason known to the Respondent BEST Undertaking's authorities as to how they have worked out dr/cr on new meter average of 936 units per month against the consumption of meter no. A126330, this is altogether contrary to the Regulation and therefore not proper. We made query to the Respondent BEST Undertaking's officers as to why they have taken the average units for amendment from the units consumed from meter no. A126330 and they are unable to explain it. This approach of the officers of the BEST Undertaking is altogether contrary to the Regulation 15.4.1 and therefore the said amendment of above said two meters is not legal and proper.

7.0 After perusal of meter ledger folio at pg. 57/C, it appears that B100478 was installed on 05/07/2011 and at that time there was zero reading and till the month of October 2011 the consumption recorded was shown as 18252 units. The said consumption might be of three months and ought to have considered by the Respondent BEST Undertaking as it appears that from December 2011 onwards there was no display. This shows negligence on the part of the then employee of the Respondent BEST

Undertaking. We are saying so because in Regulation 15.4.1, the period of three months has been given with a view that atleast within three months, Distribution Licensee must replace the meter. Here we wish to observe that electric meter is revenue generating and important apparatus in the hands of Distribution Licensee so they have to be very keen in providing best equipped electric meters as well as in replacement of defective meter with a view to uplift income of the Distribution Licensee.

- 8.0 Having regard to the above said discussion we have arrived at the conclusion that amendment carried out by the Respondent BEST Undertaking in respect of two defective meters viz. B100478 & F111857 is contrary to the Regulation 15.4.1 and therefore it is liable to be set aside. Thus we direct the Respondent BEST Undertaking to carve out amendment of the above two defective meters in accordance with Regulation 15.4.1 and issue revise bill. Regulation 15.4.1 allows the Distribution Licensee to take average meter consumption for twelve months immediately preceding three months prior to the month in which the bill is contemplated. The record goes to show that there is availability of readings prior to 05/07/2011 recorded by the meter no. H084332. The Respondent BEST Undertaking's officers are supposed to take the average units for amendment of earlier periods and not from units recorded by replaced meters.
- 9.0 It is pertinent to note that in para 2.1, it has been submitted that meter no. B100478 installed on 05/07/2011 had recorded abnormal high reading of 18252 units in October 2011 hence the consumer was not billed in October 2011.
- 10.0 As regards defective meter bearing no. A126330 we have cautiously gone through record (pg. 59/C) and amendment units carved out as 1495 units on the basis of base period from 09/07/2015 to 08/07/2016 for twelve months and it is perfectly in accordance with Regulation 15.4.1. The said amendment of three months is proper and legal. So the complainant is liable to pay Rs. 62,004.21 as debit note passed for amendment of three months of defective meter no. A126330.
- 11.0 The representative of the complainant has submitted that the proposed amendment of the earlier two defective meters is barred by the limitation as per section 56(2) of Electricity Act, 2003. On this point the Respondent BEST Undertaking has submitted that the amount first due is the date on which the first demand notice is issued to the consumer and therefore the limitation starts from the date of the receipt of the said notice. On this point the Respondent BEST Undertaking relied upon the decision in W.P. no 7015 of 2008 in case between *M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli, Silvassa of Hon'ble Bombay High Court* in which it has been held that limitation starts after valid bill has been sent to the consumer. We rely upon the ratio laid down in the above said ruling and we have least hesitation to hold that the proposed amendment of earlier two defective meters is within limitation.

- 12.0 For the above stated reason, we have arrived at the conclusion that amendment carried out for two defective meters bearing no. B100478 & F111857 is not legal and proper as per MERC Regulation 15.4.1. So we think it just and proper to direct the Respondent BEST Undertaking to carry out the amendment of the above said two meters as per provision of Regulation 15.4.1 and issue revise bill.
- 13.0 As regards defective meter no. A126330, the amendment is legal and proper therefore the complainant is liable to pay the amount of Rs. 62,004.21 to the Respondent BEST Undertaking within one month. Thus the complaint deserves to be partly allowed.
- 14.0 Dissenting views of S.V. Fulpagare, Member, Distribution Licensee

In the instant case the consumer has submitted his grievance before CGR Forum and requested to give him justice. He further denies to pay the charges charged in his bill after five years. In this regard, I have to state as follows.

As per the details submitted by the Respondent BEST Undertaking (details extracted through system ID 17294284 placed at pg. 33/C) that meter no. B100478 was installed on 05/07/2011 with initial starting reading as '0' kwh units against the defective meter no. H084332.

As per the procedure followed in BEST Undertaking, the meters prior to delivery to Undertaking by the meter manufacturer, were tested by them at their end and after receipt of these meters at Meters Dept. each and every meter is tested in the BEST's lab prior to install the same at site for consumer's installation.

As per the submission given by the Respondent BEST Undertaking at para 2.1, meter no. B100478 was installed on 05/07/2011 and the meter had recorded abnormal high reading of 18252 kwh units in October 2011. Hence the consumer was not billed in October 2011. In this regard I have to state that, it is purely the opinion of concerned officer and against this he had not submitted any documentary evidence of that time, such as meter test report. Further it is also not mentioned about the abnormal meter reading recorded in October 2011 on meter reading folio (copy placed at pg. 27/C) and meter consumption history record maintained in computerized system etc.

As per the laid down procedure adopted in the Undertaking mentioned in above para, the meter installed at above site was tested twice i.e. firstly at the manufacturer's end and secondly at Undertaking's testing lab. Hence the question does not arise that the consumption recorded by the tested meter no. B100478 during period 05/07/2011 to October 2011 was abnormally high.

It is observed from the record (copy placed at 47/C) that, from the date of installation of meter no. B100478 on 05/07/2011 till its removal from site on 22/12/2012, even after meter had recorded consumption of 18252 kwh units in October 2011, instead of charging 18252 kwh units till October 2011, only 200 kwh units were charged to the consumer in December 2012. It is further observed that even though consumer had utilized electricity for his premises for garment manufacturing business purpose for

the above said period i.e 05/07/2011 to 12/12/2012, the consumer had only paid Rs. 4,142.00 for the above said period in four instances i.e. Rs. 121.00, Rs. 3,408.00, Rs. 314.00 and Rs. 299.00. The consumer was charged for very less kwh units of 200 even though we compare the consumption recorded by meter for the period from 05/07/2011 to October 2011 i.e. 18252 kwh units for about 115 days.

It was also confirmed by the consumer's representative during hearing that, consumer had run garment manufacturing business in his premises during the period 05/07/2011 to 22/12/2012.

In the instant case the meter no. B100478 was tested prior to install at consumer's premises by meter manufacturer as well as in BEST Undertaking's meter testing lab and had registered correct consumption of 18252 kwh units till October 2011 and same was charged as '0' kwh units at the time of billing in October 2011, is a clerical mistake done by the then billing staff of the department, at that time.

I am further rely upon the judgment passed by Hon'ble High Court in case of M/s Rototex Polyester v/s Administrator of Dadra and Nagar Haveli (U.T.) electric department that in case the consumer is under billed on account of clerical mistake the bar of limitation cannot be raised by the consumer.

In view of the above and being a Member of Distribution Licensee, as per my opinion the consumer must be charged as per the consumption recorded by meter no. B100478 during 05/07/2011 to October 2011 for 18252 kwh units with slab benefit.

- 15.0 In the aforesaid facts and circumstances by majority view, we proceed to pass the following order.

ORDER

1. The complaint no. N-G(N)-336-2017 dtd. 18/10/2017 stands partly allowed.
2. The Respondent BEST Undertaking is hereby directed to carry out dr/cr in respect of defective meters bearing no. B100478 & F111857 strictly as per Regulation 15.4.1 and issue revise bill to the complainant within one month from the date of order.
3. The complainant is directed to pay Rs. 62,004.21 as dr/cr note carved out in respect of defective meter no. A126330.
4. The compliance of this order be informed to the Forum within a period of one month there from.
5. 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