

**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-EA-180-2012 dtd. 14/12/2012**

Mr. Russi Khambata .....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent

**Present**

Quorum : Chairman  
Shri R U Ingule, Chairman

Member  
1. Shri M P Thakkar, Member  
2. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri Ashok Somani  
2. Shri Sunil shah  
3. Shri Gopal H. Katari

On behalf of the Respondent : 1. Shri R. S. Kale, DEEA  
2. Shri S. M. Sonawane, SEA  
3. Shri S. B. Doifode, Supdt. (A-ward)  
4. Shri V. R. Sawant, AAM (IGR)-A-ward

Date of Hearing : 23/01/2013

Date of Order : 13/02/2013

**Judgment by Shri. R.U. Ingule, Chairman**

Mr. Russi S. Khambatta, 7/10, Botawala Building, Gr. Flr., Horniman Circle, Fort, Mumbai - 400 001 has come before the Forum for grievance regarding claim of amount Rs. 5,26,791.94 raised for exceeding contract demand pertaining to A/c no. 102-013-413.

**Complainant has submitted in brief as under :**

1.0 The complainant has approached to IGR Cell on 27/08/2012 for grievance regarding claim raised pertaining to A/c no. 102-013-413. The complainant has approached to CGRF in schedule 'A' dtd. 05/12/2012 (received by CGRF on 13/12/2012) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to waive the claim of Rs. 5,26,791.94 as he has not received any satisfactory reply / evidence from the department.

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

- 2.0 This is a case of an amendment claim towards tariff difference for the period from 1.7.2008 to 1.6.2011 pertaining to A/c no.102-013-413. The above consumer was earlier having a 3 phase conventional meter no.L871542 installed on 13.12.1993. The total sanctioned load as per the installation card was shown as 8.62 kW under the A/c no.310-203-015 with C1 tariff. As per the request from the consumer the tariff was changed from C1 to C2 by replacing the conventional meter by electronic meter no.P991001 under new A/c no.100-013-413 on 18.12.1999. The sanctioned load should have been 8.62 kW as mentioned above, however, as per the ledger obtained from EDP dept. from January-2000, the sanctioned load was shown as 1kW which is same till date.
- 3.0 The meter no.P991001 was replaced by new meter no.P062178 on 24.5.2008 for the reasons TB seal missing and Demand reset problem. Thereafter, w.e.f. 1.6.2008 as per the tariff schedule, approved by MERC, the new tariff LT II a was made applicable to the consumer's A/c since the sanctioned load as per records was 1kW.
- 4.0 During routine scrutiny of recorded M.D. of electronic meters pertaining to LT II a tariff in the bill month of Feb.2011, it was noticed that, the M.D. recorded by meter no.P062178 was 32.977 kW against the 1kW sanctioned load as per records. On detailed scrutiny of past records, the consumer's meter no. P062178 had recorded MD continuously above 20kW from the billing month of July-2008. The statement of E-units of this meter clearly shows this fact. Thus, the consumer was eligible for LT II b tariff from July 2008 onwards. Therefore, the consumer's tariff was changed from LT II a to LT II b from the billing month of July-2011 and the consumer is paying bills as per the new LT II b tariff from July-2011 till date.
- 5.0 Subsequently, the meter no.P062178 was replaced by ToD compatible meter no.P110373 on 15.10.2011. However, the sanctioned load as per records was shown as 1kW. After implementation of correct tariff i.e. LT IIb for consumer A/c from July-2011, Energy Audit dept. had put up a proposal on 7.03.2012 for Audit scrutiny for recovery of difference in change of tariff and same was audited on 03.08.2012. As per the amendment proposal, the total debit amount was worked out to ₹ .5,26,791.94 for the period 01.07.2008 to 01.06.2011. Same was intimated by the Energy Audit Dept. to the consumer vide their letter dtd. 16.08.2012 and amount of ₹ .5,26,791.94 was debited in consumer's A/c in the billing month of Aug.2012, which was disputed by the consumer and he registered a complaint vide letter dtd. 27.8.2012 with the IGR Cell and represented that they are not liable to pay the said claim amount as they have already applied for extension of load vide requisition no. 1090855 dtd.7.8.2008 with Customer Care (A ward). Thereby the complainant requested to reverse the debit

amount of ₹.526791.94 from their bill of Aug.2012 and also requested to accept current bill amount every month till the matter is resolved. Accordingly, we had accepted current bill amount from Aug.2012 till date. Also, Energy Audit dept. had asked Customer Care `A' Ward for confirmation of status of requisition no.1090855 vide DL dtd. 28.9.2012 and 01.12.2012. In response to which Customer Care `A' Ward informed that the consumer had registered application no. 1090855, however he did not make compliances. Hence load was not regularized and updated.

- 6.0 The complainant was replied vide letter dtd. 24.9.2012 informing that the said claim raised towards tariff difference for the period from 1.7.2008 to 1.6.2011 is correct and is in order as we have already informed consumer vide our letter dated 30.07.2008, that as per MERC's new tariff order dated 06.06.2008 for the year 2008-2009 the tariff has been changed with effect from 01.06.2008. In the said letter consumer was also intimated regarding maximum demand recorded by him on meter No. P991001 for the month March 2008 = 29.62kW, April 2008 =33.84kW and May 2008 = 36.52kW and further informed that billing will be on demand based charges per kVA per month and he was requested to intimate us their contract demand in kVA as recorded maximum demand on the consumer meter is more than sanctioned load of 1kW. The complainant was also informed to contact our respective Divisional Engineer, Customer Care ward to regularize their load within 15 days by registering requisition failing which the existing sanctioned load i.e. 1 kW would be treated as his sanctioned load and contract demand of 1.25kVA will be considered for billing purpose. It was also informed to him that the penalty charges would be levied for the exceeding contract demand as per the tariff schedule. Hence, the complainant was billed with demand based tariff from the month of July 2011 i.e. after changing the tariff from LT II a to LT II b. As the consumer was using excess load than the sanctioned load, a penalty for exceeding contract demand was being levied in consumer's monthly bill.
- 7.0 Along with the complaint registered with CGRF on 13.12.2012, the complainant has enclosed 3 nos. of electricity bills copies i.e. July.2006 to Sept.2006 showing sanctioned load as 24 kW and asked to waive the claim of ₹.526791.94 from bill of A/c no.102-013-413. In this regard it is already mentioned above that requisition no. 1090855 for extension of load was registered by the consumer but he did not make compliances and hence the load was not updated. However, consumer never contacted to Undertaking with their old electricity bill wherein sanctioned load was shown as 24kW. Therefore, the amended bill levied in consumer's A/c towards tariff difference of ₹.5,26,791.94 by BEST Undertaking as per MERC tariff schedule is correct hence same cannot be withdrawn / waived off.
- 8.0 In view of above it is prayed that the amendment claim raised towards tariff difference in consumer's A/c is correct and is in order hence cannot be withdrawn / waived off. The complainant may not be allowed to produce any more evidences before the Hon'ble CGRF during the hearing of the case without giving us an opportunity to offer our comments. The consumer should not be allowed to change the facts of the case presented in his application.

## REASONS :

- 9.0 We have heard for the complainant Shri Ashok Samant along with Shri Sunil Shah and Shri Gopal H. Katari and for Respondent BEST Undertaking Shri R.S. Kale (DEEA), Shri S.M. Sonawane SEA3, Shri S.B. Doifode Supdt. CCEA and Shri V.R. Sawant AAM(IGR)A at length. Perused documents.
- 10.0 A letter dtd. 16/08/2012 addressed to the complainant by the Respondent BEST Undertaking informing about debiting Rs. 5,26,791.94 in the account of the complainant on the ground of "wrongly applied tariff" for the period from 01/07/2008 to 01/06/2011, has triggered of the controversy to be resolved by this Forum in the instant complaint.
- 11.0 In this context this Forum finds that the complainant in its letter dtd. 27/08/2012 *inter-alia* contended that he received a letter dtd. 30/07/2008 from the Respondent BEST Undertaking informing him application of new tariff dtd. 06/06/2008 as per MERC for the year 2008-2009 w.e.f. 01/06/2008. Therefore, as per the intimation given by the Respondent BEST Undertaking, the complainant had intimated his contract load in KVA vide his application to the Commercial Dept. to regularize the load accordingly, bearing no. 1090855 dtd. 07/08/2008.
- 12.0 Placing a heavy reliance on such requisition application no. 1090855 dtd. 07/08/2008, the complainant strenuously urged that despite such requisition was made to the Respondent BEST Undertaking to change his contract demand in KVA, no change was affected by the Respondent BEST Undertaking. Therefore, it is highly unsustainable on the part of the Respondent BEST Undertaking to claim such arrears that too of Rs. 5,26,791.94 for the period from 01/07/2008 to 01/06/2011. For such gross lapse on the part of the Respondent BEST Undertaking, the complainant can not be made to pay such huge arrears after lapse of 3-4 years, that too when he had already submitted an application to the Commercial Dept. vide no. 1090855 on 07/08/2008 for regularization of the load.
- 13.0 The complainant in order to provide an impetus to his contention further submitted that after submission of application dtd. 07/08/2008 for regularization, the complainant had made repeated follow up with the Commercial Dept. of the Respondent BEST Undertaking for regularization of load and also had written a letter dtd. 11/10/2008. However, no response was given by the said department of the Respondent BEST Undertaking. Now after a lapse of 3-4 years the Respondent BEST Undertaking claiming Rs. 5,26,791.94 on the ground of difference in tariff pointing out such change in tariff being introduced by the MERC w.e.f. 01/06/2008, therefore such claim is not legal.
- 14.0 This Forum however did not find any iota of merit in the aforesaid contention raised by the complainant for a simple reason that albeit he has submitted requisition application no. 1090855 dtd. 07/08/2008 to the Commercial Dept. of the Respondent BEST Undertaking for regularization of load for affecting change in tariff. However, the various documents maintained by the Respondent BEST Undertaking in its record placed on file before this Forum at Exhibit R1 to R8 manifests that the complainant thereafter was required to make compliance like paying of additional security deposit etc. for want of the same therefore no effect was given by the Respondent BEST

Undertaking to his requisition application no. 1090855 and the same was informed to the complainant accordingly.

- 15.0 We further find that the complainant has made an ill-founded submission that after submitting application for regularization of the load on 07/08/2008 he had also submitted Reminder dtd. 11/10/2008. This Forum however, finds that in this context instead of placing an office copy of the same along with the acknowledgment of the Respondent BEST Undertaking thereupon, the complainant has been submitting to refer the documents of the Respondent BEST Undertaking. It is also vitally significant to observe at the juncture that the alleged repeated follow up made by the complainant with Commercial Dept. has also not been supported by any shred of evidence. The complainant in support of his contention, has placed before this Forum the electricity bills for the month of July, August and September 2006 and pointed out that at the foot of it, the Respondent BEST Undertaking has shown load being 24 kw. Therefore the same has not been 1 kw on record as contended by the Respondent BEST Undertaking.
- 16.0 In this connexion, this Forum finds that the electricity bills to be served on about 10 lacs consumers, has been generated on the basis of the information recorded on its "Ledger Folio", in respect of its each consumer. Placing a reliance on such "Ledger Folio", placed on file before this Forum, the Respondent BEST Undertaking has vehemently submitted that for the entire period the load of the complainant, has been recorded as 1 kw and accordingly mentioned on each and every electricity bills, served on the complainant. The Respondent BEST Undertaking further elaborated that the bills presented by the complainant must be showing 24 kw load out of sheer printing mistake. The Respondent BEST Undertaking therefore asked the complainant to place on file the other bills for earlier or latter period. This Forum has also directed the complainant to do so, in support of its said contention. However, the complainant could not produce the same. We therefore find ourselves unable to assign any merit to the said contention raised by the complainant.
- 17.0 It is further pertinent to observe in this regard that after submitting the requisition application dtd. 07/08/2008 we find that the complainant was blissfully complacent in receiving the electricity bill with the application of tariff for 1 kw when he was fully aware that the same has been wrong and his load has been on much higher side. Despite it, he did not care to put effort and get corrected such application of tariff when it was within his knowledge that he has been paying the electricity charges at a lower rate i.e. under 'LT-II a' instead of 'LT-II b', since he was consuming electricity load for more than 20 kw per month (maximum demand).
- 18.0 This Forum thus finds from the aforesaid state of affairs that on one hand the complainant was knowingly availing the benefit of paying the electricity charges at the lower rate i.e. 'LT-II a' instead of 'LT-II b', that too for a period of 3-4 years and when eventually he was slapped with a bill claiming the arrears of Rs. 5,26,791.94 he was making hue and cry raising various ill-founded contentions in order to evade his liability to pay the said arrears of charges. As such this Forum finds that the complainant has been trying to reap the benefit of the intentional and deliberate inaction on his part, and this Forum can not allow him to do so, especially when it would be at the cost of public fund.

- 19.0 This Forum now proceed to advert to another vital legal aspect of the matter i.e. whether the said claim made by the Respondent BEST Undertaking has been *time barred* in view of statutory provision provided u/s 56 of the Electricity Act, 2003.
- 20.0 In this context this Forum finds it expedient to advert to a law laid down by Hon'ble Division Bench of the Bombay High Court in a case of *M/s Rototex Polyester and Anr. v/s Administrator, Administration of Dadra & Nagar Haveli (U.T.) Electricity Department, Silvassa & Ors. (W.P. no.7015/2008)*. This Forum finds that the matter on the hands of their Lordship was pertinent to a demand notice served on the complainant by the Distribution Licensee as on the ground of "*oversight*" it has issued a bill for a period from July 2003-2007 by applying "500" as a multiplication factor instead of "1000" till July 2007. Therefore, all the bills for the said period were revised with "1000" multiplication factor directing the consumer to pay the same within 15 days.
- 21.0 Their Lordships on perusing the provision provided u/s 56 of Electricity Act, 2003 and the judgment handed down by Hon'ble Division Bench of the Bombay High Court in a case of *M/s Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. v/s The Municipal Corporation for Greater Bombay, (AIR 1978 Bom. 369)* and that to a judgment of Single Judge in a case of *U.A. Thadani & Anr. v/s BEST Undertaking (2000 vol. 102(2) Bom. L.R. 502)* and that in *Brihanmumbai Municipal Corporation v/s Yatish Sharma (2007 (3) Bom.C.R. 659)* and proceeded to hold that "in case the consumer is not billed on account of clerical mistake or due to oversight, the bar of limitation can not be raised by the consumer".
- 22.0 It is significant to observe at the juncture that Their Lordships of the Bombay High Court in this judgment has also considered a vitally important aspect that the expression "*due*" employed by the legislature u/s 56 of the Electricity Act, 2003 means "*due*" and "*payable*" after a "*valid*" bill has been sent to the consumer.
- 23.0 At this juncture this Forum finds it significant to advert to a judgment handed down by the Single Bench of Hon'ble Bombay High Court in a writ petition no. 6783/2009 between *MSED Co. Ltd. v/s Venco Breeding Farms Pvt. Ltd. and in a writ petition no. 2894/2007 between MSED Co. Ltd. v/s Green Word Magnum Enterprises*. In both these judgments the Lordship of the Bombay High court placed a reliance on the judgment handed down by the Hon'ble Division Bench of Bombay High Court in a case of *Awadesh S. Pandey v/s Tata Power Co. Ltd. (2007 (1) MLJ 289)*.
- 24.0 In this judgment the Hon'ble Division Bench of Bombay High Court has *inter-alia* held that u/s 56 of Electricity Act, 2003 provides a special mechanism to enable the licensee to recover its dues expeditiously and the sub section (2) there under only provides for limitations that the recourse to recover by cutting of electricity supply is limited for a period of 2 years from the date when such sum becomes "*due*". Their Lordship further proceeded to hold that apart from the above mechanism, Distribution Licensee independently can make recovery by way of suit.
- 25.0 On perusing the aforementioned judgment handed down by the Hon'ble Bombay High Court, this Forum finds that the aspect of the sum "*due*" envisaged u/s 56(2) of the Electricity Act, 2003 has been held by the Hon'ble Division Bench in a case of *M/s Rototex Polyester (Supra)* means "*due*" and "*payable*" after a "*valid bill*" has been

served on the consumer. This Forum thus finds that the bill to be served on the consumer as envisaged u/s 56(2) has to be a *valid bill*. Therefore Their Lordship in a case of *Rototex Polyester* has proceeded to hold that the revised bills served on the consumer on the ground of *clerical mistake* or *oversight* can not said to be a *valid bill*. Therefore a limitation of 2 years provided u/s 56(2) cannot be applied to it. Ultimately Their Lordship proceeded to uphold the amended bills raised against the consumer in case of *Rototex Polyester* on account of its *clerical mistake* or *oversight*.

- 26.0 To conclude on this aspect, this Forum observes that the aspect of *valid bill*, was not under consideration of the Hon'ble Division Bench of the Bombay High Court in a case of *Awadesh S. Pandey (supra)*. This Forum observe that the facts of the matter before us squarely found to be covered under the judgment of *M/s Rototex Polyester (Supra)*.
- 27.0 We therefore proceed to hold that the revised bill under consideration served on the complainant has been squarely maintainable to be recovered from the complainant while correcting the application of tariff i.e. under 'LT-II b' instead of 'LT-II a' and thus the same has not been time barred as alleged by the complainant.
- 28.0 In the aforesaid observation and discussion in a natural fall out the complaint should fail. Accordingly we proceed to pass the following order.

#### ORDER

1. The complaint no. S-EA-180-2012 stands dismissed.
2. Copies be given to both the parties.

(Shri S M Mohite)  
Member

(Shri M P Thakkar)  
Member

(Shri R U Ingule)  
Chairman