

**BEFORE THE COMPLAINANT 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-154-2012 dtd. 29/06/2012**

Shri Chetoomal Baldevdas .....Complainant

V/S

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

**Present**

Quorum :  
1. Shri R U Ingule, Chairman  
2. Shri S P Goswami, Member  
3. Smt Varsha V Raut, Member - Absent

On behalf of the Complainant : Shri. Riyaz Ismail Dimtimkar

On behalf of the Respondent :  
1. Shri. Shri D.N. Pawar, DEEA  
2. Shri A.A. Patil, Ag. AEEA-4  
3. Shri U.D. Junnere, AOEA-1

Date of Hearing : 26/07/2012

Date of Order : 28/08/2012

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

Shri Chetoomal Baldevdas, Shop No. 61, 6<sup>th</sup> floor, Nariman Bhavan, Nariman Point, Mumbai - 400 021 has come before the forum for Grievance regarding amendment of defective meter - A/c no. 100-013-369\*7.

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

- 1.0 The complainant has approached to IGR Cell on 25/04/2012 regarding wrongly charged penalty for exceeding Contract Demand pertaining to A/c no. 202-010-333\*1. The complainant has approached to CGRF in schedule 'A' dtd. 25/06/2012 (received by CGRF on 26/06/2012) as no remedy is provided by the Distribution Licensee regarding their grievance. The complainant has requested the Forum to review the amendment bill and not to disconnect the supply till settlement of this case.

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

- 2.0 Meter no. P 990959 installed on 11.12.1999 at above premises i.e. 6<sup>th</sup> flr., Shop no.61, Nariman Bhavan, Nariman Point, Mumbai-21 found display defective on dtd. 10.6.2000. On 12.6.2000, letter is given to complainant's representative, stating that, your meter (display defective) will be replaced on 17.6.2000 and your electric bill will be suitably amended in due course. As per SM/00610/ENAUDT00013 dtd. 10.6.2000, meter no.P990959 was replaced by new meter no.P970138 in presence of complainant's representative on 17.6.2000
- 3.0 After observation of billing record, it was found that complainant was billed on assumed basis of units 560,800,800,680,680,680 for the month from Jan-2000 to June-2000 respectively, as it was under billed, then as per 12 months average units bills were amended for the period 11.12.1999 to 17.6.2000 by considering base period of 17.6.2000 to 1.3.2001 as per monthly consumption recorded by meter no.P970138 and the claim amount of Rs.1,94,408.36 was informed to the complainant vide our letter dtd. 13.8.2004 and same is preferred in the bill on 5.8.2004.
- 4.0 Complainant has not disputed the same but he had not paid. So reminder letter sent on 12.9.2008, 15.4.2009 and 2.6.2010 to the complainant. On 18.12.2011, we had revised the claim as per A.O.349 / A for the period 11.12.1999 to 8.6.2000 by considering base period for average as 18.12.1998 to 11.12.1999 as per monthly consumption recorded by meter no.Q970560 amounting to Rs.1,51,561.70. The net debit of Rs. 1,51,561.70 was informed to complainant vide letter dtd. 30.12.2011. Subsequently, the amendment claim amount Rs. 1,51,561.70 was debited in complainant's A/c in the month of March 2012.
- 5.0 The complainant had given complaint in 'C' form on dtd. 25.4.2010. We had replied to the complainant on 8.6.2012.
- 6.0 The complainant has given complaint in Annexure 'A' form dtd. 25.6.2012.
- 7.0 Meter no.P990959 installed at the above premises found display defective and was replaced by meter no.P970138 on dtd. 17.6.2000. As the meter was totally stopped/non functional therefore meter was not referred to Electrical Inspector.

v) In view of a law laid down by the Hon'ble Supreme Court in a case of BEST Undertaking V/s Laffans Pvt.Ltd. AIR 2005 Supreme Court 2486.

For the period for which the reading could not be recorded or retrieved because the meter was burnt or non-functional, there is nothing wrong in having raised the demand based on the average consumption for the similar period during the previous year. It is a reasonable basis. So far as the period for which the meter is said to be incorrect.

- 8.0. Amendment bill issued by the BEST is to be treated as accurate as per MERC and therefore the complainant be directed for payment of amendment claim.
- 8.1 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.
- 8.2 The complainant should not be allowed to change the facts of the case presented in his application.

#### REASONS :

- 9.0 We have heard Shri Riyaz Ismail Dimtimkar for the complainant and also gone through a written argument placed on file by him. We have also heard for the Respondent BEST Undertaking Shri D.N. Pawar, DEEA, Shri A.A. Patil, Ag. AEEA-4 & Shri U.D. Junnere, AOEA-1 at length.
- 10.0 A bill dtd. March 2012, directing the complainant to pay adjustment amount of Rs. 1,51,552.70 along with electricity charges for the said month, has triggered of the controversy to be resolved in the instant complaint. Pertinent to observe at this juncture that by filing a complaint in Annexure 'C' dtd. 25/04/2012, the complainant has challenged levying the amendment bill of Rs. 1,51,552.70 on him in the bill of March 2012. The said complaint has been turned down by IGR Cell vide its letter dtd. 08/06/2012 informing the complainant, that the case was of a stopped meter. Therefore, there is no need to refer the meter to the Electrical Inspector for inspection. The complainant was further informed that the amendment bill for the period from 11/12/1999 to 08/06/2000 was prepared as per the provision provided under the India Electricity Act, 1910 as the case was prior to 2006. The complainant was also informed that the said amendment claim for stopped meter was made applying Administrative Order no. 349(A) sr. no. (1). On this grounds the Respondent BEST Undertaking has justified its action of claiming the amendment claim of Rs. 1,51,552.70 and served a bill in the month of March 2012.
- 11.0 This Forum finds that by filing a complaint in schedule 'A' before us the complainant has challenged that he was informed about the amendment bill on account of defective meter for the first time vide its letter dtd. 13/04/2004. Therefore, the Respondent BEST Undertaking ought to have made the amendment in the electricity bill as per the provisions provided under the Electricity Act, 2003 and not as per the Indian Electricity Act, 1910. Complainant further contended that he was informed by the Respondent BEST Undertaking about a meter being "defective meter", therefore, the Respondent BEST Undertaking ought to have referred the matter to the Electrical Inspector. The complainant further contends that alternatively, if the Respondent BEST Undertaking treating the said meter being a

“stopped meter”, in that case the amendment bill period should not exceed for a more than three months’ period.

- 12.0 This Forum finds that although the said meter has been referred to be a “defective meter”, by the Respondent BEST Undertaking, however the documents placed before this Forum dtd. 10/06/2000 and 12/06/2000 blatantly manifest that the said meter no. P990959 provided to the complainant was a “display defective”. Accordingly, it was shown to the complainant on 10/06/2000 when the same was replaced in his presence by new meter no. P970138 on 17/06/2000 and a signature of representative of the complainant / consumer was taken in token thereof.
- 13.0 We therefore hold that it was well within the knowledge of the complainant / consumer that the defect in the meter was of a nature of the display being defective as such the meter was a “stopped meter”. Obviously therefore, there is no any warrant and justification for sending such “stopped meter”, to the Electrical Inspector as urged by the complainant in the instant complaint.
- 14.0 This Forum further observes that by filing written argument during the course of hearing of the instant complaint, the representative of the complainant has raised a new contention and placed a much reliance on it that the bill was issued on 13/08/2004 and the demand thereto was made on 12/09/2008 i.e. after a period of four years. Therefore, as envisaged under section 56(2) of the Electricity Act, 2003 the claim made by the Respondent BEST Undertaking has been time barred. The complainant further contended that as admitted by the Respondent BEST Undertaking that they have debited the account of the consumer only in the month of March 2012 by serving a bill on him showing adjustment amount of Rs. 1,51,552.70. At the same time the Ledger Folio placed on by doesn’t show that as envisaged under section 56(2) the Respondent BEST Undertaking has been showing the said amended charges, continuously as recoverable as arrears for the electricity supplied. On behalf of the complainant therefore it has been heavily contended that the claim made by the Respondent BEST Undertaking has been time barred one. Therefore the relief sought need to be granted to the complainant on this ground alone.
- 15.0 Albeit the aforesaid contention that the amendment claim made by the Respondent BEST Undertaking being time barred, has been raised by the complainant for the first time during the course of the hearing and not pleaded in the complaint. However while entertaining the same, this Forum finds no merit in the same. A simple reason for the same has been that as contemplated under section 56(2) of the Electricity Act, 2003 the charges to be recovered from the consumer needs to be considered as *due* from him, only after a bill on account of the such electricity charges is served upon him.
- 16.0 In this connexion, this Forum refers to a judgment handed down by Hon’ble single bench of the Bombay High Court in a case of **BEST Undertaking v/s Yatish Sharma** (Writ Petition 264/2006) dtd. 18/01/2007. Significant to note that this judgment has been pressed into service by the complainant himself before this Forum. As observed above the Respondent BEST Undertaking has finally quantified the amendment claim of Rs.1,51,552.70 and served a bill on him in the month of March 2012 taking a recourse to its A.O. 349(A) sr. no. (1) as an amendment claim for “stopped meter”, and accordingly informed the complainant. We therefore, hold the amendment claim

made by the Respondent BEST Undertaking does not get hit by the period of limitation provided under subsection (2) of 56 of the E.A., 2003, as claimed by the complainant.

- 17.0 True, that initially as urged by the complainant / consumer, the Respondent BEST Undertaking had informed him vide its letter dtd. 13/08/2004 to pay an amount of Rs. 1,94,408.36 towards the amendment of bill for "stopped meter" no. P990959 pertaining to the period from 11/12/1999 to 17/06/2000. Accordingly, we find letters dtd. 12/09/2008, 15/04/2009 and 02/06/2010 placed before us by the Respondent BEST Undertaking at Exhibit 'C'. However, it is also true that the Respondent BEST Undertaking has revised the amendment claim of Rs. 1,94,408.36 and its management has given the consent to correct the same to Rs. 1,51,561.70. Accordingly, the Respondent BEST Undertaking has informed the complainant its action in process vide its letter dtd. 30/12/2011 and served bill thereafter as observed above. The copy of the said letter has been placed before us at Exhibit 'E'.
- 18.0 On the back drop of the aforesaid facts and circumstances, this Forum has been of a considered view that admittedly the complainant has raised his grievance by filing a complaint in Annexure 'C' on 25/04/2012 entirely on the basis of bill for the month of March 2012. Significant to note that the copy of the electric bill for the month of March 2012 was also enclosed along with the said complaint. To reiterate as observed above the initially worked out amendment claim of Rs. 1,94,408.36 for the period from 11/12/1999 to 17/06/2000 was thereafter revised by the Respondent BEST Undertaking and brought down by quantifying the same to Rs. 1,51,552.70 and accordingly served the bill for the month of March 2012. To reiterate before the IGR Cell, the complainant had challenged the said bill of March 2012, which has been a basis for appearing before this Forum.
- 19.0 This Forum may further observe that in the complaint filed before us in schedule 'A', while giving the details of the grievance for redressal, the complainant has entirely focused his grievance round the amended claim of Rs. 1,51,561.70 contending that it being a "stopped meter" case the amendment bill period should not exceed for more than three months period. We thus find that what has been challenged before IGR cell and this Forum has been initially quantified amendment claim of Rs. 1,51,561.70 which was informed to the complainant by the Respondent BEST Undertaking vide its letter dtd. 30/12/2011 and thereafter served a bill for the month of March 2012. Obviously therefore as envisaged under subsection (2) of section 56 of the E.A. 2003, the Respondent BEST Undertaking indeed proceeding to recover the due amount from the complainant / consumer, within a period of two years from the date when such sum became first due.
- 20.0 We may observe at this juncture that we do not smack any mala fide or artifice on the part of the Respondent BEST Undertaking in its action of revising the earlier amendment claim of Rs. 1,94,408.36 and bringing it down to Rs. 1,51,561.70, to which the management has accorded its sanction. Much hue and cry has been made on behalf of the complainant that in order to bring the amended claim charges, within the period of limitation provided under subsection (2) of section 56 of the E.A. 2003, the Respondent BEST Undertaking has deliberately undertaken such exercise of revising the claim and informing the same to the complainant vide its letter dtd. 30/12/2011 at Exhibit 'E'.

- 21.0 To reiterate, this Forum does not find any *mala fide* or any stress of contrivance on the part of Respondent BEST Undertaking in revising its amendment claim. We also find the complainant being miserably failed in discharging its burden to prove such grave allegation made against the Respondent BEST Undertaking being acted in *mala fide* to recover the amended claim by hook or crook. To conclude on this aspect we observe that as laid down by the Bombay High Court in a case of *BEST Undertaking v/s Yatish Sharma* in the present case the amendment claim become first due for recovery from the complainant when a bill in a month of March 2012 was served on him by the Respondent BEST Undertaking. Therefore, the amendment claim made against the complainant has not been time barred as envisaged under section 56(2) of the E.A. 2003.
- 22.0 Now this Forum finds it expedient to assess and analyse what should have been the amended electricity charges, to be claimed from the complainant. In this context, we observe that the complainant was informed vide letter dtd. 08/06/2012 by the Respondent BEST Undertaking with reference to its complaint in Annexure 'C' referred before the IGR Cell that the meter no. P990959 was "stopped meter", therefore no need to refer the matter to Electrical Inspector and for amendment claim of Rs. 1,51,561.70 was adjusted in the month of March 2012. The said amendment has been made as per the Indian Electricity Act, 1910 and in the implementation of A.O. 349(A) sr.no. (1), i.e. amendment period to be taken to six months based on previous one year's average.
- 23.0 This Forum, however, finds that the Respondent BEST Undertaking has wrongly applied the provision provided under the Indian Electricity Act, 1910. In this connexion the Forum finds it expedient to place a reliance on the judgment handed down by the Hon'ble Bombay High Court in a case of BEST Undertaking v/s Yatish Sharma. Significant to observe that in the matter under consideration of Hon'ble Bombay High Court the case was of a display defective as such of stopped meter. Therefore, no meter reading was taken between January 2000 to May 2000. Thereafter, the Respondent BEST Undertaking in that matter had proceeded to prepare a supplementary bill for a said period on the basis of the average consumption recorded by the new meter during a period from May to June 2001
- 24.0 It is thus explicit that facts of the case before consideration of the Hon'ble Bombay High Court have been almost parallel to the facts under consideration of this Forum. The Hon'ble Bombay High Court in the said judgement inter-alia has observed that in exercise of the power conferred by section 50 of the E.A. 2003, the State Regulation Commission has framed regulation in 2005. Undoubtedly these regulations have come into force after the disputed period involved in the proviso. The second proviso provided under the regulation 15.4.1 laid down that in case the meter has stopped recording, the consumer to be billed for the period for which the meter has stopped recording, *upto a maximum period of three months* based on the average meter consumption for 12 months immediately preceding three months prior to the months in which the billing is contemplated.
- 25.0 It is further significant to observe that the Hon'ble Bombay High Court further proceeded to observe that since the State Commission as a delegate of the legislature, has framed Regulation, *albeit in 2005*, the ends of justice would be met if a direction is issued in the said case to the effect that the petitioner i.e. present Respondent BEST Undertaking, would be at liberty to bill the consumer up to maximum period of

three months, based on the average metered consumption for 12 months immediately preceding the three months as envisaged in regulation 15.4.1. Accordingly, the BEST Undertaking was directed to carry out such exercise and to issue a fresh supplementary bill accordingly to the consumer.

- 26.0 This Forum at the cost of repetition observes that, the facts involved in the matter before the Hon'ble Bombay High Court and that before us are almost similar and identical. In the present case the meter has been stopped one and there was no any display for the period from December 1999 to June 2000. This judgment has been pressed into service by complainant. This Forum therefore in the aforesaid observation and discussion finds it expedient to follow the line of order passed by Hon'ble Bombay High Court for directing the Respondent BEST Undertaking to follow the regulation no. 15.4.1 while serving the amended bill on the complainant / consumer.
- 27.0 In the aforesaid observation and discussion the present complaint needs to be partly allowed. Accordingly we proceed to pass the following order.

#### ORDER

1. Complaint no. S-EA-154-2012 dtd. 28/06/2012 stands partly allowed.
2. The Respondent BEST Undertaking has directed to prepare and serve the amended bill on the complainant / consumer as provided under the proviso of Regulation 15.4.1 of MERC (Electric Supply Code and other conditions of supply) in respect of the case of stopped meter.
3. The Respondent BEST Undertaking has been directed to comply with this order within a period of one month and to report the compliance thereof within 15 days therefrom.
4. Copies be given to both the parties.

(Absent)  
(Smt Varsha V Raut)  
Member

(Shri S P Goswami)  
Member

(Shri R U Ingule)  
Chairman