

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-E-90-2010 dt. 25/1/2010

M/s. Chittaranjan Hsg. Co-op (P) Ltd.,Complainant

V/S

B.E.S. & T. UndertakingRespondent

Present

Quorum	1. Shri. R.U.Ingule, Chairman 2. Shri. S. P. Goswami, Member 3. Smt. Varsha V. Raut, Member
On behalf of the Complainant	1. Shri. Rajesh Punjabi 2. Shri. Rajkumar Saraf
On behalf of the Respondent	1. Shri. M.R.Dharaskar, DECC(E-ward) 2. Shri. V.K.Raul, A.L.O. 3. Smt. E.F.Jacques, AOIGR(E-Ward).
Date of Hearing:	4/03/2010 & 11/03/2010
Date of Order :	8/4/2010

Judgment by Shri. R.U.Ingule, Chairman

M/s. Chittaranjan Hsg. Co-op (P) Ltd., 386, Sane Guruji Marg, Tardeo, Mumbai – 400 034, approached to CGR Forum for his grievance against wrong amendment of electricity bill of A/c No. 750-369-001 for a period 26/10/2005 to 25/5/2009. He has prayed for correction of electricity bill for a period of 2 years instead of 43 months, waiver of D.P. & interest charges, providing slab wise benefits, providing monthly installment facility & non disconnection of electricity supply. The hearing of the case was first held on 4/03/10. As per the request of the consumer hearing was again scheduled on 11/03/10.

Complainant's contention in brief are as under

1. Complainant **M/s. Chittaranjan Hsg. Co-op (P) Ltd.**, has approached to Internal Grievance Redressal Cell of respondent (BEST) on 3/8/2009 for his grievance against wrong calculation of revised bill of Rs.4,61,683/- & violation of MERC Regulation by the respondent while raising & revising the electricity bills.
2. In response to his grievance in IGR Cell, Respondent vide letter dtd. 6/10/2010 has informed that the revised amendment claim is in order and hence same is required to be paid by the complainant.
3. Unsatisfied by the reply of respondent's IGR Cell, complainant approached CGR Forum in Schedule 'A' format on 19/1/2010 and requested to revise the amendment claim of Rs.4,77,900.49 for a period of 2 years as per the MERC Regulations.
4. Complainant submits that the revised bill of Rs.477900.49 for the period 26/10/2005 to 25/5/2009 is not as per MERC Regulations. He further submits that as per clause no. 56(2) of Electricity Act, 2003 his electricity bills should be revised for a period of 2 years waiving DP & interest charges. He also requested for monthly slab wise benefit & providing suitable monthly installments for paying the arrears. He further submits that from 26/10/2005 to 25/5/2009 regular monthly bills were not served. He was served accumulated bill for the period 26/10/2005 to 25/5/2009 after a gap of 43 months & thus informed that respondent (BEST) has violated clause no. 15.1.1 of MERC (Electric Supply Code & other conditions of Supply) 2005. During the hearing he clarified that consumer's name is Chittaranjan Housing company Pvt.Ltd & not **Chittaranjan Housing Co-op Pvt.Ltd.** He further submitted that respondent should have revised the bills in the name of the tenant as he has already handed over the building to the tenants.

In counter Respondent, BEST Undertaking has submitted its contention *inter alia* as under

5. Respondent submits that this complaint doesn't stand on the preliminary ground as our registered consumer is M/s. Chittaranjan Housing Company Pvt.Ltd. whereas complainant is **M/s. Chittaranjan Housing Co-op Pvt.Ltd.**
6. Meter nos M030109 and M032644 were installed in the premises of the consumer **M/s. Chittaranjan Housing Co-op Pvt.Ltd.** at the above address on 26/10/2005 as common facility meter (Lift & Water Pump) against connection order dated 23/12/2005.
7. Although meter no M03009 & M032644 were installed at consumer's premises on 26/10/2005 against Temporary connection order dated 23/12/2005, Temporary Account was not opened and consumer was not billed upto Jan-2009, as the connection orders were not received by the concerned section. Hence a bill of Rs.8,32,202/- for accumulated 70595 units for the period from 26/10/2005 to 16/1/2009 was preferred to the complainant on 4/3/2009 on Temporary LT VIII tariff under Temporary A/c. Also another bill for Rs.8,48,848/- was preferred for the period 16/1/2009 to 10/2/2009 on 4/3/2009, which includes previous bill of Rs.8,32,202/-.
On complainant's request dated 16/3/2009 the above bill was revised and a fresh corrected bill of Rs.4,77,900.49 for the period of 26/10/2005 to 25/5/2009 with residential tariff was preferred and complainant was informed vide our letter dated 5/6/2009. Complainant was also requested to pay the corrected bill urgently.
8. Subsequently, consumer paid Rs.16,217/- on 10/6/2009 and Rs.1 lac on 26/6/2009 then filed a complaint under Annexure 'C' dated 03/8/2009 disputing that the corrected bill of Rs.4,77,900.49 is not calculated as per MERC Rules and Regulation. They again requested to correct the bill after deducting Rs.1,16,217/- paid under protest.
9. Vide our letter no. dated 30/9/2009 informed the complainant that the bill preferred by respondent for the period from 26/10/2005 to 25/5/2009 is based on actual consumption recorded by meter no. M030109 and M032644 and the same is in order. Complainant were also informed that the amount of Rs.4,77,900.49 have been debited to their bill in the month of July-2009. Later on complainant made the further payment of Rs.3,55,000/- upto 8/1/2010.
10. Complainant in their complaint has mentioned that as per Electricity Act Section 56(2) their bill should have been revised for 2 years instead of 43 months. However, it is pertinent to mention here that Section 56(2) quoted by the complainant in defence of their case is well settled in the order of High court in the case of **Yatish Sharma V/s. BEST.**, reported in Air 2008 of 2006, and in the Judgments of the Hon'ble High Court reported in **AIR 2008 Jarkhand 99** have interpreted the meaning of Section 56(2). The learned judges of High Court in their Judgment stated that a due date is supposed to have occurred only on preferring a bill to the complainant and not immediately after the consumption of energy. In the above Judgments it is held that the amount becomes due only upon presentation of a bill and not from the date of consumption. The limit of two years prescribed under Section 56(2), therefore will apply only after presentation of the bill. In accordance with this interpretation, the bill preferred by respondent is not violating any Law or any Provision under the Electricity Act, 2003 or the Regulation of Electricity supply code and condition of Supply.

11. Although there was delay in preferring the bill, facts remains that the complainant was continuously using the supply during the period 26/10/2005 to 25/5/2009. Consumer has neither approached respondent for the bill nor disputed about the quantum of electricity consumed by him, but trying to take shelter under section 56(2) of the Act for avoiding the payment of bills. Hence, the electricity bills preferred are legitimate dues, to be recovered from the complainant.
12. As a remedy, we have preferred bills considering 'Residential tariff' instead of 'temporary Tariff' for Temporary meters, as meters are being used for common amenities by Rehabilitated tenants. This has effectively reduced the electricity bills from Rs.8,48,848/- to Rs.4,77,900.49/-
13. The consumer was billed for actual consumption recorded by the meter no.M030109 and M032664 distributed evenly from 26/10/2005 to 25/5/2009. Hence bill of Rs.4,77,900.49 is the legitimate dues be recovered from complainant.
14. In case of temporary meters the bills are prepared manually. In case of temporary meters the consumer should approach the respondent if the bills are not received by them.
15. As directed by Forum, the respondent submitted the following documents:-
 (A) Letter of consumer dated 03.05.2005 requesting to grant the electric supply to 'E' wing building for rehabilitated tenants, along with relevant notings where reference of the consumer's letter is made for providing temporary meters on permanent tariff.
 (B) Undertaking letter of consumer dated 14.10.2009 giving assurance to pay the outstanding amount by January 2010.
 (C) Citations of High Court Judgements interpreting the meaning of section 56(2) of Electricity Act, 2003.

REASONS

16. We have heard learned representative **Shri. Rajesh Punjabi & Shri. Rajkumar Saraf** for the complainant & learned representatives **Shri. M.R.Dharaskar, DECC(E-ward), Shri. V.K.Raul, A.L.O, Smt.E.F.Jacques, AOIGR (E-Ward)** for the distribution licensee. Perused papers.
17. At the outset, we observe that the entire controversy raised in the instant matter, revolves around a solicitary contention that the claim made for the electricity consumption charges by the respondent BEST Undertaking, is liable to be restricted for a period of 2 years by virtue of a provision provided u/s 56(2) of the Electricity Act, 2003.
18. Before we advert to the controversy, in brief the facts giving rise to raising instant dispute *inter alia* are that the respondent BEST had provided to the complainant a meter no. M030109 & M032664 and installed on 26/10/2005 against the connection order dated 24/10/2005 for a permanent tariff as a common facility meter for lift and water pump installed in the complainant premises. Later on with the approval of the respondent BEST officials the connection order dtd. 24/10/2005 was cancelled and a new temporary connection order for 'temporary meter on permanent tariff' was provided.
19. As per respondent BEST's contention, despite the complainant was using supply of electricity, temporary account was not opened by the respondent's concerned office and therefore the complainant was not billed upto Jan-2009. It is on 4th March 2009 the complainant was billed for a period of 26/10/2005 to 16/1/2009 on temporary tariff for Rs.8,32,202/-. Thereafter the complainant disputed the said bill. This complaint was considered by the respondent and on opening a permanent account a fresh bill for the period 26/10/2005 to 25/5/2009 for Rs.4,77,99.49 on the basis of 'residential tariff', came to be served on the complainant.
20. On perusing the complaint preferred before this Forum by the complainant, we find that placing a heavy reliance on section 56(2) of the Electricity Act, 2003 the complainant contends that such corrected bill raised by the respondent BEST should be for a period of 2 years instead of 43 months. In counter the respondent BEST Undertaking strenuously contends before this Forum that despite availing the electricity supply without any interruption for a period of 43 months, the complainant never inquired about any bill not received from the respondent Undertaking.
21. Pressing in to service a Judgement handed down by the Hon'ble Bombay High Court in the case of **Brihanmumbai Municipal Corporation V/s. Yatish Sharma** (AIR 2007, Bombay 73), it has been empathetically submitted by the respondent that as envisaged u/s 56(2) of the Electricity Act, 2003 the electricity consumption charges due from the complainant can be recovered by the respondent Undertaking within a period of 2 years from the date when such sum becomes first due. The respondent submits that the electricity consumption charges to be claimed from the complainant required to be considered to be "due", only after a bill of the electricity consumption charges has been served upon the complainant. It is therefore submitted on behalf of the respondent Undertaking that in the present matter the electricity charges claimed by the respondent cannot be said to be restricted only for a period of 2 years as per the provision provided u/s 56(2) of the Electricity Act, 2003. The respondent contends that it has legitimately claimed the electricity charges of Rs.4,77,900.49 from the complainant for the period 26/10/2005 to 25/5/2009 by raising a bill on him in the month of June-2009.
22. On perusing the Judgement handed down by the Hon'ble Bombay High Court in the case of **BMC V/s. Yatish Sharma (Supra)**, we find a merit in the contention raised by the respondent BEST Undertaking. We find that the Hon'ble Bombay High Court on adverting to the provisions provided u/s 56 (1) & (2) of the Electricity Act, 2003, has *inter alia* laid down in paragraph no. 8 that 'a sum' cannot be said to be due from the consumer unless a bill for a electricity charges is served upon the consumer and any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply could be contemplated even without the service of a bill. Though the liability of a consumer arises or occasioned by a consumption of electricity, the payment falls due only upon the service of a bill. In Paragraph no. 9 of this Judgement his Lordship of the Bombay High Court further observes that such interpretation of the expression 'sum due' has also been accepted in a judgment of a learned single Judge of the High Court in **H.D. Shourie's case** (AIR 1987 Del 219).
23. In our considered view the Judgement handed down by the Hon'ble Bombay High Court in the case of **BMC V/s. Yatish Sharma (Supra)** squarely settled down the controversy raised in the instant matter. We therefore find it highly unsustainable on the part of complainant to contend that the corrected bill raised by the respondent BEST Undertaking should be restricted for a period of 2 years and cannot be raised for a period of 43 months. The reliance placed on section 56 (2) of the Electricity Act, 2003 by the complainant thus found to be misplaced and miscomprehended one.
24. We therefore proceed to hold in the aforesaid reasons that there is nothing wrong on the part of respondent BEST Undertaking to claim the arrears of electricity consumption charges of Rs.4,77,900.49 for a period of 26/10/2005 to 25/5/2009 by informing the complainant vide letter dtd. 5/6/2009.
25. Before we part with this order, we may observe that no regulation provided under MERC (Electricity Supply Code and Other Conditions of Supply) regulations, 2005 can be cited to supersede the provisions provided under the section 56 of the Electricity Act, 2003. We further observe that regulations are to supplement and run in tandem with the provisions provided under the various sections under the Electricity Act, 2003 and cannot be cited to supplant & supersede any of such provision like section 56(2) of the Electricity Act, 2003 as attempted by the complainant. Needless to mention that such attempt made by the complainant in the present matter to place reliance on regulation 15.1.1 of the MERC (Electricity Supply Code and Other Conditions of Supply) regulations, 2005, has been futile & absorptive.
26. In the net result we find the instant complaint moved before this Forum by the complainant being unsustainable in law and therefore liable to be dismissed. Accordingly we proceed to pass following order.

ORDER

1. The complaint no. N-E-90-2010 dtd. 25/1/2010 stands dismissed.
2. Copies be given to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member