

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. N-G(S)-162-2012 dtd. 09/08/2012

Mr. Kalluri SayannaComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri R U Ingule, Chairman

Members

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

On behalf of the Complainant :
1. Shri. Sunil H. Pawar
2. Shri Naresh K. Sayanna

On behalf of the Respondent :
1. Shri. A.S. Sawakhande, decc(G/S)
2. Shri. S.B. Lande, AECC(G/S)
3. Shri. P. Amberkar, AAO (G/S)

Date of Hearing : 11/09/2012

Date of Order : 26/11/2012

Judgment by Shri. R.U. Ingule, Chairman

Mr. Kalluri N. Sayanna, Gate no. 5, Ground flr., Mahalaxmi Dhobighat, Dr. E. Moses Road, Mumbai – 400 011 has come before the Forum for Dispute regarding outstanding amount, waiving of DP, interest on arrears & reconnection of supply pertaining to A/c no. 532-153-103.

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

- 1.0 The complainant has approached to IGR Cell on 02/11/2011 for wrong billing. The complainant has approached to CGRF in schedule 'A' dtd. 06/08/2012 (received by CGRF on 07/08/2012) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to waive the DP, interest on arrears & reconnect the supply.

Complainant has submitted in brief as under :

- 2.0 Initially meter No.0989785 was installed in the name of Shri Kalluri Naresh Sayanna under consumer A/c.No.532-153-103 on 16.5.1998 to the premises situated at Grd. Floor, Mahalaxmi Dhobi Ghat, Gate 5, Dr.E. Moses Road, Mumbai-11. The said meter was replaced by new meter No.L900437 on 26.6.1998. Subsequently, this meter was also replaced on 10.1.2003 by new meter No.N025643. As meter No.L900437 was not updated in Master Data hence units consumed by both these meters during period from June,1998 to January,2004 consumer was not billed.
- 3.0 The final reading recorded by meter No.L900437 on 26.6.1998 was 59476 and reading recorded by second meter No.N025643 on 24.2.2004 was 3325. Considering the same the bill was prepared for 6252 units consumed during the period from 6.6.1998 to 6.1.2004 and bill amount of Rs.4,51,508.06 was issued to the consumer on 22.4.2004.
- 4.0 Subsequently, said accumulated bill amount was reviewed as per Electricity Act, 2003 for two years. Thus, the initial amount of Rs.4,51,508.06 was revised to Rs.1,99,319.65. The same was informed to the complainant vide letter dated 19.9.2007 by our F/South Ward.
- 5.0 As complainant has not paid the said amount hence the total outstanding amount was Rs.3,42,569.61 as on 1.11.2007. We have approached the complainant for recovery of outstanding amount, when we were informed that there is dispute pending under Annexure 'C'. Hence we have not disconnected the electric supply.
- 6.0 On 14.9.2009 our staff visited the site for disconnection of electric supply when meter No.M080326 was found on site instead of meter No.N025643. On going through the record it was observed that meter No.N025643 was replaced for the reason 'No display' on 20.11.2008 by meter No.M080326, which was not updated on record. The supply was disconnected by removing the cut-out of meter No.M080326 on 14.9.2009 for non-payment of Rs.4,81,526/-. However, the complainant has not paid the said outstanding amount. Our staff visited the site on 9.10.2009 for actual removal of meter, when the said meter was not found on board. As per our record we have not removed the said meter. The consumer has not informed us for the same.
- 7.0 The said premises was once again inspected on 2.8.2010 for recovery of arrears amount when it was observed that the electric supply to said premises was found 'ON' through

A/c.no.532-151-173 which is in his mother's name i.e. Smt. Laxmi Chota Sayanna, hence the outstanding of Rs.6,91,003/- was debited in said account.

- 8.0 As per Electricity Act,2003 Section 56.2, we have revised initial accumulated bill amount claimed for the period from June,1998 to January,2004 i.e. 6 years to 2 years and amount has been reduced from Rs.4,51,508.06 to Rs.1,99,319.65. However, the consumer has not paid the said revised amount and during follow up for disconnection of electric supply the consumer has made an application under Annexure `C' dated 12.01.2007, for which reply is given by the Customer Care (F/S) Dept. However, consumer has not approached CGRF under Annexure `A'. The consumer has used electric supply through the meter of A/c.No.532-151-173 as stated above.
- 9.0 Our request to Hon'ble CGRF to direct the applicant to pay the outstanding amount of Rs.6,91,003/- towards consumer A/c.No.532-151-173.

REASONS:

- 10.0 We have heard Shri. Sunil H. Pawar and Shri Naresh K. Sayanna for the complainant and for the Respondent BEST Undertaking Shri. A.S. Sawakhande, DECC(G/S), Shri. S.B. Lande, AECC(G/S) and Shri. P. Amberkar, AAO (G/S).
- 11.0 The facts involved in the case under consideration of this Forum have been quite complex one. This Forum finds that the complainant has been a washer-man and was provided with a meter no. 0989785 installed on 16/05/1998. The said meter was replaced with a new meter no. L900437 on 26/06/1998. During a site investigation it was observed that the meter no. L 900437 was not billed therefore the same was replaced by new meter no. 025643 on 10/01/2003.
- 12.0 The final reading recorded by the meter no. L 900437 on the date of replacement viz. 10/01/2003, was 59476. The new meter no. 025643 shown a reading as 3325 when the same was inspected by the inspector during his visit at the site on 24/02/2004.
- 13.0 Thus the Respondent BEST Undertaking considering a final reading viz. 59476 of meter no. L 900437 and that of a new meter no. 025643 of 3325 units, the total units worked out was 62523 consumed by the complainant during a period from 06/06/1998 to 06/01/2004. For the same a bill for an amount of Rs. 4,51,508.06 subject to audit scrutiny, was worked out and directed the complainant to pay the same in advance by installments to reduce the burden of paying in lump sum and to avoid the DP charges over the same.
- 14.0 This Forum finds it significant to observe that thereafter by serving a letter dtd. 19/09/2007, while replying the complaint made by the complainant in regard to alleging the said electricity bill being wrong one in Annexure 'C', the Respondent BEST Undertaking has stated that under the provisions of Electricity Act, 2003 the bill has been raised only for the period of two year i.e. from January 2001 to January 2003 for Rs. 1,99,319.65. Accordingly the Respondent BEST Undertaking proceeded to credit the amount of Rs. 4,51,508.06 and debited the amount of Rs. 1,99,319.65 in the ensuing bill.

- 15.0 From the aforesaid state of affairs on the part of the Respondent BEST Undertaking, this Forum finds that the complainant has been initially charged for 62532 units during a period from 06/06/1998 to 06/01/2004 raising the electricity bill of Rs. 4,51,508.06 and the same has been thereafter reduced to a period of two years i.e. from January 2001 to January 2003, that too for Rs. 1,99,319.65 taking a recourse to the provision provided under the Electricity Act, 2003.
- 16.0 This Forum in this context finds such a limitation of two years for fastening a liability to pay electricity charges on the consumer, being provided under section 56 (2) of the Electricity Act, 2003. Therefore it is blatantly manifest that for recovery of charges in arrears against the complainant, the Respondent BEST Undertaking thus has taken a recourse to section 56 of the Electricity Act, 2003 as observed above. Explicitly therefore the controversy raised before this Forum needs to be resolved considering ambit and scope of said section 56.
- 17.0 This Forum observes that it is for the first time the Respondent BEST Undertaking has quantified the electricity charges in arrears payable by the complainant of Rs. 4,51,508.06 by informing the same to the complainant vide its letter dtd. 22/04/2004 placed before us. In the view of this Forum therefore as observed by the Lordship of the Hon'ble Bombay High Court in a case of **Brihanmumbai Municipal Corporation v/s Yatish Sharma (AIR 2007 Bombay 73)** for the purpose of subsection (1) and (2) of 56 a sum is required to be *considered as first due* from the complainant when he was informed for the first time a quantified amount of arrears vide the letter dtd. 22/04/2004 informing him to pay the same, providing therein all the details as to the period, meter nos., account no and consumption of total units etc.
- 18.0 Now this Forum finds it significant to advert to the judgment handed down by Hon'ble Division Bench of Bombay High Court in a case of **Awadesh S. Pandey v/s Tata Power Company (AIR 2007 Bombay 52)**. In this judgment their Lordship of the Hon'ble Division Bench of Bombay High Court *inter-alia* observed that in its opinion section 56 (2) only provides a limitation that the recourse to recovery by cutting of electricity supply is limited for period of two years from the date when such sum becomes **due**. As long as a sum is **due** which is within two years of the demand and can be recovered, the Licensee can exercise its power of coercive process of recovery by cutting of electricity supply. Apart from this mechanism independently the Licensee can make recovery by way of a suit.
- 19.0 In the line of the law laid down by Hon'ble Bombay High Court referred to above, this Forum is of the view that the amount to be recovered from the complainant had become first **due** on 22/04/2004 when a quantified amount along with rest of the particulars were informed for the first time to the complainant for its payment. It is therefore within a period of two years therefrom the Respondent BEST Undertaking could have taken the recourse for disconnection of electric supply for non payment of such arrears claimed by it from the complainant.

- 20.0 However, admittedly the Respondent BEST Undertaking has disconnected the supply provided to the complainant on 14/09/2009 for non payment of the arrears which were communicated to the complainant on 22/04/2004. This Forum fail to comprehend as to on what grounds the Respondent BEST Undertaking has taken into consideration a period of two years from January 2001 to January 2003 and proceeded to demand reduced electricity arrears of Rs. 1,99,319.65 taking a recourse to the provision provided under the Electricity Act, 2003, as informed to the complainant vide its letter dtd. 19/09/2007.
- 21.0 At this juncture it is pertinent to note that as submitted by the Respondent BEST Undertaking, meter no. 0989785 was replaced with a meter no. L900437 on 26/06/1998. Admittedly the meter no. L900437 was not updated on the record. The same was replaced with a meter no. 025643 on 10/01/2003. When the Inquiry Inspector of the Respondent BEST Undertaking visited the site on 24/02/2004 he noticed that the complainant was not billed during a period from June 1998 to January 2004. Therefore the complainant was charged for consumption of 62532 units on the basis of final reading recorded by the meter no. L900437 and the reading shown by meter no. 025643 on 24/02/2004.
- 22.0 We thus find that the entire action taken by the Respondent BEST Undertaking in charging the complainant for consumption of electricity has been erroneous one and we do not find proper application of provision provided under Electricity Act, 2003 which is obviously under section 56(2), on the part of the Respondent BEST Undertaking.
- 23.0 However, to reiterate the Respondent BEST Undertaking vide its letter dtd. 19/09/2007 proceeded to revise its claim of electricity in arrears made against the complainant, reducing the same to Rs. 1,99,319.65 from Rs. 4,51,508.03, confining the same for a period of two years i.e. from January 2001 to January 2003.
- 24.0 The Respondent BEST Undertaking failed to convince this Forum, as to how such its action, has been sustainable and in consonance with provisions provided under sub-section (2) of section 56. This Forum, for exploring the possibility of settling the grievance amicably between the litigating parties, has conducted a discussion and deliberation with the parties to the litigation. Therein the complainant has shown his ready and willingness to pay the arrears to the tune of Rs. 2,50,000.00 and prayed for restoration of electric supply to his premise, accepting his moral liability to pay the charges against the electricity consumed by him. However, to our surprise, the Respondent BEST Undertaking proceeded to stick up to its prayer for a direction to the complaint for paying the arrears of Rs. 6,91,003.00 standing on his account no. 532-151-173 which we find unjust and unsustainable in law.
- 25.0 We may mention before we part with this order that there has been a bit delay in passing the order in present complaint, as we were trying to amicably resolve the dispute, as the complainant had shown his willingness for the same.

26.0 In the aforesaid observation, we proceed to pass the following order.

ORDER

1. Complaint no. N-G(S)-162-2012 dtd. 09/08/2012 stands partly allowed.
2. The Respondent BEST Undertaking has been directed to accept an amount of Rs. 2,50,000.00 from the complainant against the arrears of electricity claimed against him.
3. The Respondent BEST Undertaking further directed to provide the electricity supply to the premises of the complainant on his payment of the aforesaid amount of rs. 2,50,000/-, along with the rest of the compliances in accordance with its rules and regulation, within a period of one month therefrom. The compliance of this order be informed to this Forum within a period of 15 days therefrom.
4. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman

Annexure 'III'

Break up of amount to be recovered from Shri Kalluri Sayanna

Sr. No.	Description	Amount in Rs.
1	Energy charges upto Oct. 2003	1,99,391.61
2	Balance interest on arrears from July 2007	2,34,103.87
3	Defective meter amendment claim for the period 28.8.2008 to 20.11.2008	44,240.54
4	Actual energy charges from November 2005 to September 2009	2,22,210.24
5	Total amount	6,99,946.26
6	Amount paid by cheque dtd. 28/07/2006	25,000.00
7	Net recoverable amount	6,74,946.26