

**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. 22799528

**Grievance No N-HVC-391-2019 dtd. 24/09/2019**

The Secretary, Social Service League .....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent no

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Dr. M.S. Kamath, Member CPO

On behalf of the Respondent no : 1. Shri S.M. Sakpal,  
2. Shri S.M. Deshmukh, Supdt. CCFS  
3. Shri D.G. Patil, AEHVC

On behalf of the Complainant : 1. Shri B.P. Dalvi  
2. Shri Sachin Mestry

Date of Hearing : 18/11/2019

Date of Order : 22/11/2019

**Judgment by Shri. Vinayak G. Indrale, Chairman**

The Secretary, Social Service League, Mehta Bldg., Dr. Babasaheb Ambedkar Rd., Parel, Mumbai - 400 012 has come before the Forum for dispute regarding debiting of Rs. 22,57,248.36 towards the recovery of fixed charges as per contract demand for the period Oct 1998 to March 2016 in the electricity bill for the month of June 2019 pertaining to a/c no. 202-000-925.

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

The complainant has approached to IGR Cell dated 16/07/2019 received on 16/07/2019 for dispute regarding debiting of Rs. 22,57,248.36 towards the recovery of fixed charges as per contract demand for the period Oct 2010 to March 2016 in the electricity bill for the month of June 2019 pertaining to a/c no. 202-000-925. The complainant has approached to CGRF in schedule 'A' dtd. NIL received by CGRF on 23/09/2019 as complainant was not satisfied by the remedy provided by the IGR Cell.

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

1. The Secretary, Social Service League has come before the Forum regarding his dispute about debiting of Rs. 22,57,248.36 towards recovery of fixed charges for the period from 01/09/1998 to March 2016 and tariff difference between LT-II (A) - commercial upto 20 kw and LT-II (C) - commercial above 50 kw for the period October 1998 to March 2016, in respect of the period of amendment and not for tariff applied pertaining to a/c no. 202-000-925.
2. Electric supply was given to the complainant premises (CBSC School) under reference through meter no. T970273 under SN tariff with sanctioned load 0.22 kw from 28/08/1998. Meter no. T970273 was replaced by meter no. T111006 under technical complaint.
3. Vide requisition no. 242452 dtd. 11/02/2016, the complainant's load was regularized from 0.22 kw to 65.70 kw and tariff was changed from LT-II (A) - commercial upto 20 kw to LT-II (C) - commercial above 50 kw. Also electricity duty was levied from the billing month of April 2016.
4. The hall in the complainant's premises being used for commercial purpose and SN tariff - concessional tariff was wrongly applied instead of commercial tariff since the date of installation of meter as per tariff scheduled in force.
5. Vide query raised by MCA dtd. 23/03/2018 MCA has pointed out that BEST has not recovered difference between fixed charges in respect of a/c no. 200-010-185 (old) and 202-000-925 (new).
6. Accordingly, necessary amendment was preferred to recover tariff difference between SN tariff and commercial tariff, LT-II (A) - commercial upto 20 kw and LT-II (C) - commercial above 50 kw and fixed charges from the date of installation of meter to regularization of load in the month of February 2016 in accordance with the applicable tariff. This has resulted in net debit of Rs. 22,57,248.36. After due audit, this was informed to the complainant vide letter dtd. 06/05/2019 and debited in electricity bill of May 2019.

7. The complainant has raised the objection for debiting the said amount and raised objection by filing complaint in Annexure 'C' dtd. 16/07/2019. Vide letter dtd. 08/08/2019, the complainant has mentioned that they have not received any calculation and period of claim. He further mentioned that, if the claim is older than 2 years, it will be violation of section 56(2) of THE E.A., 2003. The verdict given by the Electricity Ombudsman in case no. 39, 45 & 46 of the year 2018 is to be followed.

### REASONS

- 1.0 We have heard the argument of Shri Bhaskar P. Dalvi, representative of the complainant and for the Respondent BEST Undertaking Shri S.M. Sakpal, Shri S.M. Deshmukh, Supdt. CCFS, Shri D.G. Patil, AEHVC. Perused the documents filed by the complainant along with Schedule 'A' and written statement filed by the Respondent BEST Undertaking along with list of documents at sr. no. 1 to 23.
- 2.0 The representative of the complainant has vehemently submitted that in the month of June 2019 the complainant has received debit bill of Rs. 22,57,248.36 towards amendment for connected load, they have not explained it as how and in what way they have calculated it. He has further submitted that the so called amendment bill issued by the Respondent BEST Undertaking is barred by limitation as per section 56(2) of THE E.A., 2003.
- 3.0 The Respondent BEST Undertaking has submitted that initially meter was installed on 28/08/1998 having sanctioned load of 0.22 kw and category of SN tariff was applied. The Respondent BEST Undertaking has further submitted that the complainant was using the hall for commercial purpose and therefore they have applied commercial LT-II (c) load and same was above 50 kw. Thus, according to the Respondent BEST Undertaking they have calculated the tariff difference which was applicable at relevant time and passed the debit note of Rs. 22,57,248.36. It is submitted that since April 2016 onwards, the consumer is paying the electricity bill regularly as per tariff category applicable for commercial purpose.
- 4.0 Having regard to the above said submission, we have asked the Respondent BEST Undertaking as to how in the year 2016 they have verified the load of consumer and claimed the tariff difference on the basis of load used by the complainant. The Respondent BEST Undertaking has submitted that BMC has issued audit query after inspection of the premises and thereby they have inspected the premises and carved out the debit note. It appears that the Respondent BEST Undertaking is stick up with their say that initial sanction load was 0.22 kw and the complainant was using more load upto 50 to 60 kw. In view of this aspect, we have called the record regarding ID papers from the department pertaining to the account of the complainant. These papers are kept in the file and after perusal of the same more particularly registration receipt dtd. 18/12/2016, it reveals that demand load was 65 kw to 70 kw. As per CIS data of a/c no. 200-010-185 sanctioned load was 0.22 kw on installation of meter on 28/08/1998.

5.0 It is pertinent to note that on 02/02/2016, the Respondent BEST Undertaking's Asst. Engr., Shri A.B. Shinde had issued a letter to the complainant society which we think just and proper to reproduce here.

*"Meter T111006 was installed for your premises exclusively for commercial purpose as applied by you. Your sanctioned load is 0.22 kw.*

*As per inspection report of our outdoor staff on 08/01/2016, it was found that the electricity supply through the above said meter is being used for commercial purpose. As per our CIS record and your monthly units consumption, the present connected load of your premises is more than 0.22 kw. Therefore, you are requested to submit details of present connected electric load list. This is an unauthorized use of electricity (Extension of load).*

*In view of above, you are called upon to regularize the load immediately for a/c no. 200-010-185, Meter T111006."*

6.0 In this letter, it has been clearly mentioned that as per our CIS record "your monthly units consumption, the present connected load of your premises is more than 0.22 kw and unauthorized use of electricity (Extension of load)." By this letter, the Respondent BEST Undertaking had requested the complainant to regularize the load immediately. Likewise in electricity bill for the month of November 2015 sanctioned load 0.22 kw is shown. If this would be the case, the question poses before us is whether the conduct of the complainant consuming the electricity more than sanctioned load amount to unauthorized use or not ?

7.0 We have gone through the provision of section 126 of THE E.A., 2003 which runs as under.

1. xxx xxx xxx
2. xxx xxx xxx
3. xxx xxx xxx
4. xxx xxx xxx

5. *If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*

6. xxx xxx xxx

8.0 In the instant case, unauthorized use of electricity period ascertained by the Respondent BEST Undertaking while carrying out the inspection on 11/02/2016 and therefore this is not the case wherein the period of unauthorized period cannot be ascertained.

9.0 We have gone through the difference amount chart placed on record by the Respondent BEST Undertaking regarding charging of tariff difference and also chart regarding payment made by the complainant through the period October 1998 to March 2016. After perusal of the same it appears that showing the load as 0.22 kw, the Respondent BEST Undertaking has charged less electricity charges and after having come to know commercial use, they have applied the commercial tariff. Considering this period, difference amount carved out by the Respondent BEST Undertaking, we have gone through the provision of E.A., 1910. We find identical provision like that of 126 of The E.A. 2003 has been made in section 42 & 43 of The E.A., 1910. The E.A., 2003 has come into force on 10<sup>th</sup> June 2003 and therefore the provision of section 126 of 2003 will certainly be applicable to the instant case at our hands.

10.0 Thus after going through the entire record and submission made by both the parties, it appears to us that the case is squarely covers u/s 126 of The E.A., 2003. One may say that when the Respondent BEST Undertaking has not taken any action u/s 126 of E.A., 2003, then how this Forum would say that section 126 of The E.A., 2003 will be applied to the instant case. Here we wish to mention that issue of jurisdiction and limitation can be very well looked into by the court and tribunal even though other side has not pleaded in that regard. The issue of jurisdiction goes to the root of the case where we constrained to look into the same considering the record of entire case and certainly comes to the question that this case is squarely comes under section 126 of The E.A., 2003.

11.0 If viewed from the above angle, the moot question poses before us whether the same shall be excluded from the jurisdiction of the Forum which is pertinent to unauthorized use of electricity. On this point we have gone through the Regulation 6.8 of MERC (CGRF & EO) Regulation, 2006 which runs as under :

6.8 *If the Forum is prima facie of the view that any Grievance referred to if fall within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum.*

(a) *Unauthorized use of electricity as provided under section 126 of the Act.*

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

12.0 In view of Regulation 6.8 of MERC (CGRF & EO) Regulation, 2006 we arrived at the conclusion that this Forum has no jurisdiction to entertain this case as it comes under section 126 of The E.A., 2003. In view of this aspect we do not wish to comment on the merit of the case about the debit note passed by the Respondent BEST Undertaking as to whether it is barred by limitation of not, as to do so will amount to futile efforts on our part. So we constrained not to make any discussion on the other aspects of the case regarding limitation and passing debit note.

13.0 Having regard to the above said discussion, we have arrived at the conclusion that the Forum has no jurisdiction as per Regulation 6.8 of MERC (CGRF & EO) Regulation, 2006.

Before parting to pass the final order we wish to observe that in the instant case, the Respondent BEST Undertaking's officer himself had issued notice saying unauthorized use of electricity than that of sanctioned load and irrespective of this fact the Respondent BEST Undertaking has not taken any action as provided under section 126 of The E.A., 2003. This shows negligence on the part of the Respondent BEST Undertaking's officers.

- 14.0 We feel to observe that in case of unauthorized use i.e. using electricity more than sanctioned load, the Distribution Licensee was incumbent upon to take action u/s 126 of The E.A., 2003. With this observation we dismiss the complaint. In result we pass the following order.

**ORDER**

- 1.0 The grievance no. N-HVC-391-2019 dtd. 24/09/2019 stands dismissed.
- 2.0 Copies of this order be given to the concerned parties.

sd/-  
(Dr. M.S. Kamath)  
Member

sd/-  
(Shri V.G. Indrale)  
Chairman