

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-GS-323-2017-2017 dtd. 30/06/2017

Constituted Attorney
BEST Electric Bakelite ProductsComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.V. Fulpagare, Member
2. Shri S.M. Mohite, Member, CPO

On behalf of the Complainant : 1. Shri Rajen Nambiar

On behalf of the Respondent : 1. Shri V.W. Manukar, Supdt.CC(GS)
2. Shri Watti Narayan Laxman, AAM, IGRC
3. Smt. Geeta Ashok, AAO, IGRC

Date of Hearing : 23/08/2017

Date of Order : 24/08/2017

Judgment by Shri. Vinayak G. Indrale, Chairman

Constituted Attorney, BEST Electrical Bakelite Products, 6, Laxmi Woollen Mills Compound, Off Dr. E. Moses Road, Mahalaxmi, Mumbai - 400 011 has come before the Forum for dispute regarding inflated billing complaint pertaining to the period 1998-99 pertaining to a/c no. 720-629-025*6.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 02/06/2017 for dispute regarding inflated billing complaint pertaining to the period 1998-99 pertaining to a/c no. 720-629-025*6. The complainant has approached to CGRF in schedule 'A' dtd. 21/06/2017 (received by CGRF on 28/06/2017) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee.

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

- 2.0 Electric supply was given to the complainant's premises through meter number D861174 for commercial purpose and meter number L831394 for industrial purpose under a/c 720-629-025. Meter number L831394 found defective since Aug 98 / Oct 98 and consumer was billed on average basis.
- 3.0 Meter no. L831394 was tested on 23/07/1999 and found **not registering** electric consumption, hence meter no. L831394 was replaced on 04/11/1999 by meter no. L910558. As per the then prevailing norms, consumption of average basis was continued. Necessary dr/cr was carried out for credit of average unit billed from October 1998 till replacement of the meter resulting in debit (code 03) of Rs. 58,237.22, credit (code 43) of Rs. 1,04,745.66 resulting in net credit of Rs. 46,508.44 and reflected in billing month December 1999.
- 4.0 We have received consumers' letter dtd. 20/03/2001 for regularize their bills. Hence, the new meter L910558 was checked on 10/07/2001 and found to be working OK. Necessary advice was forwarded to EDP Dept. for cancellation of average billing and refund excess billing charge. Instead of passing credit of excess units charged on average basis, EDP dept has passed debit of Rs. 2,70,907 in bill of month of July 2001 under code 28. To rectify this, necessary dr/cr was carried out, debit (code 03) of Rs. 1,10,334.98 and credit (code 43) of Rs.3,30,128.75 and Rs. 1,21,034.67 passed in February 2002 and debit of Rs. 47,374.55 was adjusted in the month of April 2002. Also DP charges amounting to Rs. 51,113.42 was credited in bill of January 2002.
- 5.0 After all dr/cr adjustments, vide our letter SCN/OSGS/HB/1146/2001 dtd. 10/12/2001, the consumer was requested to pay balance outstanding amount of Rs. 1,76,412.69. As the consumer did not make the payment, Disconnection Notice was served to the complainant. Aggrieved by this, the consumer has filed Suit no.

7296 of 2002 (LC Suit 738/2002) before High Court. Thereafter, only current bills were accepted from the consumer till December 2016.

- 6.0 Legal Dept. has informed to us vide letter dtd. 23/12/2016 that the complainant has withdrawn the said suit unconditionally on 03/03/2013 and therefore suit stands disposed off. On receipt of the Court's order, the consumer was requested vide letter dtd. 06/01/2017 to pay total outstanding amount of Rs. 18,75,936 as on May 2017 within 15 days failing of which his meter is liable to for disconnection in terms of section 56(1) of E.A., 2003.
- 7.0 Consumer's grievance in Annexure 'C' dtd. 02/06/2017 was disposed off by stating that the cause of action is prior to enactment of E.A., 2003 and Regulation 6.6 of MERC (CGRF & EO), Regulation 2006. Also suit no. 729 of 2002 was withdrawn unconditionally by the complainant himself. Even after withdrawal of the case on 03/03/2013, the consumer did not approach to BEST Undertaking for any remedy immediately. He has approached to BEST Undertaking only on 25/01/2017 through a letter to the department, after serving notice for making payment on 06/01/2017.
- 8.0 The outstanding amount has increased to Rs. 17,85,680.00 by levying DP charges and penalty interest. The consumer is liable to pay this amount.

REASONS

- 9.0 We have heard arguments of the complainant in person and for the Respondent BEST Undertaking Shri V.W. Manukar, Supdt.CC(GS), Shri Watti Narayan Laxman, AAM, IGRC and Smt. Geeta Ashok, AAO, IGRC. Perused the documents filed by either parties and written submission filed by BEST along with Annexure marked as Exhibit 'A' to 'K'.
- 10.0 The complainant has vehemently submitted that out of two meters provided to his premises, one meter bearing no. L831394 was stopped and after 1 ½ year they have replaced the said stopped meter and therefore the bill or demand notice issued by BEST Undertaking claiming amount of Rs. 1,76,412.69 dtd. 10/12/2001 placed at Exhibit 'B' is illegal and therefore the Respondent BEST Undertaking has no right to claim the said amount. He has further submitted that the Respondent BEST Undertaking has taken approximately 1 ½ years for replacing the meter and therefore their action of charging average bill is illegal and so amount claimed under Exhibit 'B' is not correct. Against this, the Respondent BEST Undertaking has submitted that they have given credit of average bill debited to the account of the complainant and after processing the dr/cr note they have claimed total amount of Rs. 1,76,412.69 from the complainant.
- 11.0 Thus, according to the Respondent BEST Undertaking considering the average monthly bill of two meters, the amount claimed in the Exhibit 'B' cannot be held as illegal or incorrect. The Respondent BEST Undertaking has further submitted that the complainant has raised the dispute of billing for the period December 1998 and June

2001 in the year 2017 and therefore as per cl. 6.6 of MERC (CGRF & EO), Regulation 2006 the Forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. While arguing the matter, the complainant has fairly conceded that cause of action arose on 10/12/2001 when demand was made. He has submitted that he has challenged the said demand notice Exhibit 'B' before the Hon'ble High Court by filing suit no. 7296 of 2002, LC suit no. 738 of 2002. He has unconditionally withdrawn the said suit in the month of December 2013 and hence he approached the Forum in 2017. Thus according to the complainant again the Respondent BEST Undertaking has issued demand notice dtd. 08/06/2017 claiming bill of Rs. 18,75,936.00 is the date of cause of action for the complainant to raise his dispute.

- 12.0 Having regard to the above said submission we have to see Annexure 'C' which has been filed by the complainant. We think it just and proper to reproduce the contents of Annexure 'C', "Meter stopped working in August 1998. Meter replaced with new meter L910558 only on 12/11/1999. The first bill on average basis was provided to us on 12/10/1998 and was promptly paid on 13/10/1998. Few more bills were provided to us which we settled promptly. The consolidated bill for Rs. 1,76,412.69 without any details was provided on 10/12/2001. This bill was disputed by us. For more details please refer our detailed complaint attached hereto." Thus the Annexure 'C' certainly goes to show that the complainant has raised the dispute regarding notice of demand issued on 10/12/2001. On this point we wish to observe that the Electricity Act came into force in 2003 and in view of section 42, the CGRF has been established and in view of provision of sub-sections (r) and (s) of Section 181 read with sub-section (5) to (7) of Section 42 of E.A. 2003. The MERC made regulation which came into force as MERC (CGRF & EO) Regulation 2003 on 10/12/2003 and same has been replaced by MERC (CGRF & EO) Regulation, 2006.
- 13.0 In view of this aspect, the complainant approached the court and unconditionally withdrawn the suit on 03/03/2013. The complainant has submitted that the then officer of the Respondent BEST Undertaking has promised to settle the dispute and therefore he has withdrawn the suit unconditionally but nothing has been placed on record by the complainant to show that that the Respondent BEST Undertaking's officer has agreed to settle the dispute. It appears that the matter was put up before the Lok Nyayalaya Panel and in Lok Nyayalaya, the complainant filed pursis before panel members and withdrawn the suit unconditionally. This shows that the complainant has come up before the Forum with a fake submission that the then officer assured to settle the dispute.
- 14.0 We have cautiously gone through the provision of E.A. 2003 and there is no provision / clause in respect of giving effect of provision of said act retrospectively. In the absence of such provision the proviso of E.A. 2003 is required to be applied prospectively i.e. the date on which the Central Govt. published the gazette. The date of the publication of the gazette is 10/06/2003. Thus the E.A., 2003 came into effect since 10/06/2003. In pursuance of the provision of the Electricity Act, MERC framed regulations which are having binding force.

- 15.0 In view of this aspect, it was expected from the complainant to approach the Forum within two years from 10/12/2001. The complainant has submitted that he has no knowledge about the said regulation therefore he has approached the CGRF. Ignorance of law is not an excuse and it is presume that everybody should have knowledge about the law, otherwise everybody should claim ignorance of law as defense.
- 16.0 We wish to observe that the complainant might have filed the suit before the court and therefore he would have not approached the Forum. But atleast when he withdrew the suite unconditionally, he ought to have raised the dispute before the IGR and Forum within two years from the date of withdrawal of the suit unconditionally. We are saying so because as per Regulation 6.7 of MERC (CGRF & EO) Regulation, 2006, the Forum cannot take cognizance of the matter for which dispute is pending before the court. If viewed from this angle, we have least hesitation to hold that the grievance raised by the complainant is barred by limitation. We think it just and proper to reproduce regulation 6.6 of MERC that “Forum shall not admit any grievance unless it is filed from the two (2) years from the date on which the cause of action has arisen.” The MERC has used the word “shall” in 6.6 so the said provision is mandatory and not discretionary. Hence, we could not entertain the complaint filed by the complainant who has raised the dispute after 17 years from the date on which the cause of action has arisen.
- 17.0 The complainant has submitted that the Respondent BEST Undertaking issued notice dtd. 06/01/2017 Exhibit ‘F’ demanding Rs. 17,85,680.00 so cause of action arose for him to raise the complaint within two years from 06/01/2017. We do not impressed by this submission as the complainant in Schedule ‘A’ has made grievance for the period 1998 to 2001 and he has no grievance about the high bill for the period 2015-16 and 2016-17. If in reality the complainant had disputed about high bill for the period 2015-2017 then certainly the complaint can be entertained.
- 18.0 We have cautiously gone through the demand bill dtd. 06/01/2017 and it appears that the complainant failed to pay the amount of Rs. 1,76,412.69 as demanded on 10/12/2001 as well as he was not regular in making payment of monthly bills and therefore said amount is grown up to near about Rs. 18 to 19 lacs. *Prima-facie* it appears to be excessive but after going through the record it appears that due to negligence on the part of the complainant the bill has been enhanced. We wish to observe that as per tariff booklet approved by MERC, the Respondent BEST Undertaking has charged DPC and interest @ 12% when payment made after 60 days but before 90 days, @ 15% if payment made after 90 days and upto 180 days and @ 18% when payment is made after 180 days from the date of billing. The said tariff has been approved by MERC and therefore the Respondent BEST Undertaking has every right to charge DPC and interest on arrears. Thus action of the Respondent BEST Undertaking charging DPC and interest cannot be held as arbitrary as they are charging it as per tariff approved by MERC.

19.0 Having regard to the above said discussion we do not find any substance in the dispute raised by the complainant as he has raised the dispute after 16-17 years of first cause of action arose for him. Thus we do not find any merit in the complaint. In result we pass the following order.

ORDER

1. The complaint no. N-GS-323-2017-2017 dtd. 30/06/2017 stands dismissed.
2. Copies of this order be given to both the parties.

Sd/-
(Shri S.V. Fulpagare)
Member

sd/-
(Shri S.M. Mohite)
Member

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