

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-FN-292-2016 dtd. 15/03/2016.

Shri Gopal Singh M. GheiComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.Y. Gaikwad, Member
2. Shri S.M. Mohite, Member CPO

On behalf of the Complainant : 1. Shri Davinder Singh Sudan

On behalf of the Respondent : 1. Shri M.M. Bhonsle, DECC(F/N)
2. Smt. T.Y. Rege, AAO CC(F/N)

Date of Hearing : 29/04/2016

Date of Order : 04/05/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

Shri Gopal Singh M. Ghei, 46/C, Ground floor, Plot no. 104-A, Ghei Ind. Garage, Sion, Road, Mumbai - 400 022 has come before the Forum regarding high Bill due to debiting claim in billing month November 2015 pertaining to A/c 659175-001.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 17/12/2015 for complaint regarding high Bill due to debiting claim in billing month November 2015 to A/c 659175-001. The complainant has approached to CGRF in schedule 'A' dtd. Nil (received by CGRF on 15/03/2016) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee regarding his grievance.

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

- 2.0 The complainant Shri Gopal Singh M. Ghei has come before the Forum regarding his dispute about debiting of stopped meter amendment amounting to Rs.4,837.25 for the period 17/07/2012 to 23/01/2013 in billing month November 2015 pertaining to meter no. B104985, a/c.No.659-175-001.
- 3.0 Electric supply was given to the consumer through meter no. B1044985 for commercial purpose and through meter no. 0914572 for industrial purpose having a/c no. 659-175-001.
- 4.0 During site inspection on 09/11/2012 meter No.B104985 was found stopped with "No Display". Hence, Meter No.B104985 was replaced by meter No.L112055 on 23/1/2013. During scrutiny it was observed that the consumer was billed with '0' units for the billing period from 17/7/2012 to 23/1/2013.
- 5.0 The stopped meter amendment for the period of three months (15/9/2012 to 17/12/2012) was preferred by considering monthly average of 164 units taking base period from 23/12/2011 to 15/6/2012 resulting in net debit of Rs. 4,837.25 as per MERC Regulation The same was debited in consumer's bill for the month November, 2015 and informed to the consumer vide our letter dated 28/11/2015.
- 6.0 The complainant consumer has taken objection stating that as per Section 56(2) of Electricity Act, 2003, the licensee has no right to recover any amount after the period of two years, and this is a time bar case.
- 7.0 It is open to Licensee to correct its electricity bill if error in any form has occurred. The facts of the case law and facts of the case are similar to the ruling of M/s.Rototex Polyester and Anr. V/s. Administrator, Administration of Dadara & Nagar Haveli (U.T.) Division Bench of Bombay High Court (W.P. No.7015 of 2008).
- 8.0 The valid notice was sent by way of electricity bill for the month of November, 2015 and the limitation shall start from November, 2015 and therefore claim could not be held as barred by limitation.

REASONS

- 9.0 We have heard arguments of the representative Shri Davinder Sudan and for the Respondent BEST Undertaking Shri Manoj M. Bhonsle, DECC(F/N) and Smt. Tanuja Y.Rege, AAO CC(F/N). Perused plethora of documents placed on record by

either party and perused written submission filed by the Respondent BEST Undertaking along with the documents marked at Exhibit 'A' to 'C'.

10.0 The representative of the complainant has vehemently submitted that the action of the Respondent BEST Undertaking carrying out the amendment for the period from 17/07/2012 to 23/01/2013 in the month of November 2015 is barred by limitation as per Section 56(2) of Electricity Act, 2003. He has further submitted that the Respondent BEST Undertaking, without any notice to the complainant has replaced the meter and without testing the said meter carried out the amendment for three months which is patently illegal and therefore the debit note of Rs. 4,837.25 passed by the Respondent BEST Undertaking is to be struck off. Against this, the representative of the Respondent BEST Undertaking has submitted that there is huge work pending for carrying out the amendment bills and there was No Display to the meter for the period from 17/02/2012 to 23/01/2013 in which period the reading '0' was recorded and therefore their action of carrying out the amendment is legal and proper.

11.0 Having regard to the above said submission of both the parties, we have to see whether the Respondent BEST Undertaking has properly carried out the amendment as per provisions of 15.4 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulation, 2005. We have gone through the provisions of Regulation 14.4.1 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulation, 2005 by which the Distribution Licensee shall be responsible for the periodic testing and maintenance of all consumers' meters. The Regulation 14.4.2 permits the consumer to test the meter upon payment of testing charges as may be approved by the Commission under Regulation 18 and request the Distribution Licensee to test the accuracy of the meter. Here, we wish to reproduce Regulation 15.4 i.e. 'Billing in the Event of Defective Meters.'

15.4.1 Subject to the provisions of Part XII and Part XIV of the act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill.

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.

- 12.0 After perusal of the above said Regulation 15.4.1, it is obligatory on the part of the Respondent BEST Undertaking to carry out the amendment in accordance with the result of the test taken subject to furnishing the test report of the meter along with the assessed bill. In this case, admittedly the Respondent BEST Undertaking has not got tested the meter and so question of giving the test report does not arise. It appears that merely on the basis of "No Display" the Respondent BEST Undertaking has carried out the amendment without testing the meter and in any case their action could not be held legal as per Regulation 15.4 as well as 15.4.1. Thus we find substance in the representation of the complainant that for carrying out the amendment the Respondent BEST Undertaking was required to test the meter in lab and come to the conclusion whether it is defective or recording high / low consumption and issue the bill accordingly.
- 13.0 The representative of the complainant has further submitted that claim of the Respondent BEST Undertaking for issuing debit note for the period from 01/06/2012 to 23/01/2013 in the month of November 2015 is barred by Section 56(2) of E.A., 2003. Against this the Respondent BEST Undertaking has submitted that it is human error and their action is squarely covered as per ratio laid down in ***M/s.Rototex Polyester and Anr. V/s. Administrator, Administration of Dadara & Nagar Haveli (U.T.) Division Bench of Bombay High Court (W.P. No.7015 of 2008)***. We have gone through the ratio laid down in the above case of our Hon'ble High Court and in our opinion, in any case it could not be held that there was human error in not issuing the debit note within the period of two years. Admittedly the debit note is passed in the month of February 2015 and so it is barred by limitation.
- 14.0 Having regard to the above said reasons we arrived at the conclusion that the debit note of Rs. 4,837.25 passed by the Respondent BEST Undertaking is barred by Sec 56(2) of E.A., 2003 and the Respondent BEST Undertaking has no right to claim the said amount. It is pertinent to note that in written submission filed by the Respondent BEST Undertaking they did not whisper a single word about delay in issuing bill of amendment. When we made a query to the officer of the Respondent BEST Undertaking, he submitted that there is huge pendency of amendment cases for which the delay is being caused. But no such explanation finds place in written submission and therefore it cannot be considered / accepted.
- 15.0 For the above said reasons we find substance in the complaint as debit note is barred by limitation as per Section 56(2) of E.A., 2003 as well as amendment is carried out without testing the so called defective meter which was not showing display. Thus the complaint deserves to be allowed, so we pass the following order.

ORDER

1. The complaint no. N-FN-292-2016 dtd. 15/03/2016 stands allowed as under.
2. The debit note of Rs. 4,837.25 passed on 28/11/2015 Exhibit 'B' is hereby struck off as barred by limitation as well as amendment is carried out without testing the meter.
3. The Respondent BEST Undertaking is directed to comply the order within one month from the date of receipt of the order and submit the report 15 days thereafter.
4. Copies of this order be given to both the parties.

(Shri S.Y. Gaikwad)
Member

(Shri S.M. Mohite)
Member

(Shri V.G. Indrale)
Chairman