

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-G(S)-235-2014 dtd. 09/09/2014.

Shri Guruprasad ShettyComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum : 1. Shri Sanjay S. Bansode, Ag. Chairman
2. Shri Suresh M. Mohite, Member CPO

On behalf of the Complainant : 1. Shri Guruprasad Shetty

On behalf of the Respondent : 1. Shri Iftekar Husain, Supdt. CC(G/S)
2. Shri S.B. Lande, AECC(G/S)
3. Smt. Chandra Iyer, AAM CC(G/S)

Date of Hearing : 20/10/2014

Date of Order : 05/11/2014

Judgment by Shri. Sanjay S. Bansode, Ag. Chairman

Shri. Guruprasad Shetty had electric supply at 1, Ground Floor, Durga Niwas, Sitaram Jadhav Marg, Lowerparel, Mumbai - 400 013 has come before the Forum for Refund of electricity duty paid on Transport Division Loss Recovery (TDLR) from June 2012 to 11/06/2014 (date of removal of electric meter after termination of agreement) pertaining to A/c no. 200-023-059.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 10/07/2014 for Refund of electricity duty paid on Transport Division Loss Recovery (TDLR) from June 2012 to 11/06/2014 (date of removal of electric meter after termination of agreement) pertaining to A/c no. 200-023-059. The complainant has approached to CGRF in schedule 'A' dtd. 03/09/2014 (received by CGRF on 05/09/2014) as no remedy is provided by the IGR Cell Distribution Licensee in respect of her grievance.

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

- 2.0 Shri Guruprasad Shetty had electric supply at premises under reference having a/c no. 200-023-059. He was our registered consumer for electricity. However, since 11/06/2014 his electric supply was disconnected by removing meter as his agreement for supply of electricity is terminated.
- 3.0 The consumer has claimed that "Electricity Duty is to be charged on Electricity Consumption Charges which shall include energy charges, maximum demand charges, fuel adjustment charge and fuel cost adjustment and it does not include TDLR and 17 % electricity duty charged by BEST Undertaking on TDLR charges in his electricity bill is illegal and unauthorized.
- 4.0 Section 61 - Tariff Regulations and 62 - Determination of Tariff under electricity Act, 2003, MERC is having statutory body for determination of tariff. As per approved tariff schedule by MERC vide MERC order dtd. 16/05/2012 in case no. 171 of 2011 (applicable from 01/06/2012) and MERC order dtd. 28/08/2013 in case of 26 of 2013 (for approving 3 year tariff schedule to be implemented from 01/09/2013 and 01/04/2014), TDLR is one of the variable component of Electricity Charges. The Electricity Duty (ED) charged in addition to electricity charges i.e. fixed charges and variable charges as per tariff schedule approved by MERC from time to time.
- 5.0 It is further worth to mention here that amount collected towards Electricity Duty from the electricity consumer is remitted to Govt. of Maharashtra immediately. In no way Undertaking is benefited by charging Electricity Duty on TDLR.
- 6.0 Charging Electricity Duty on TDLR is not any defect or deficiency in services given by the Undertaking to the complainant.
- 7.0 Complainant's stand for not charging Electricity Duty on TDLR is not maintainable as his grievances is not filed within 2 years from the date of cause of action, TDLR is one of the variable component of Electricity Charges approved by MERC and at present Electricity (Supply) Act, 1948 is not in force.

REASONS

- 8.0 We have heard Shri Guruprasad Shetty in person and Shri Iftekar Husain, Supdt. CC(G/S), Shri S.B. Lande, AECC(G/S) and Smt. Chandra Iyer, AAM CC(G/S) for the Respondent BEST Undertaking. Perused documents placed before this Forum.
- 9.0 An abuse of process of law, has been a salient feature of the instant matter under consideration before this Forum. The consumer *inter-alia* has raised a grievance that the Electricity Duty (for short ED) to be charged on electricity consumption charges, which should include only i) energy charges ii) maximum demand charges iii) fuel adjustment charges and iv) fuel cost adjustment, as provided under the Bombay Electricity Duty Act (for short BEDA), 1958. The same has been mentioned by the Respondent BEST Undertaking on the reverse of its electricity bill served on the complainant. However, complainant is having a grievance that the Respondent BEST Undertaking illegally has included “Transport Division Loss Recovery” (for short TDLR) and charged 17% ED thereon also. In short, the complainant consumer has assailed the inclusion of TDLR and charging 17% of ED thereupon in the electricity bill provided to him during the period wherein he was the consumer of the Respondent BEST Undertaking.
- 10.0 This Forum observes that despite Internal Grievance Redressal Cell (for short IGRC) of the Respondent BEST Undertaking while replying the complaint filed before it in the Annexure ‘C’, has brought to the notice of the complainant consumer that the *Maharashtra Electricity Regulatory Commission* (for short MERC) while exercising a statutory powers vested with it under the provision of Electricity Act (for short EA), 2003, has granted its approval and sanction for inclusion of the TDLR and levying of 17% ED thereupon. Therefore, such statutory exercise undertaken by the MERC while granting the present *tariff* to the Respondent BEST Undertaking cannot be a subject matter of any challenge either before the IGR, this Forum or rest of the trial courts. This Forum, however, observes that by giving a Nelson’s eye to such legal aspect of the matter brought to the notice of the complainant consumer, he has undertaken the instant futile and abortive exercise to approach the IGR and this Forum, without taking any trouble to go through the concern statutory provisions provided under the EA, 2003.
- 11.0 This Forum is of a consider view that there are more than one reason to reject the present complaint being highly unsustainable in law. To begin with, this Forum observes that there has been an elaborate and precise scheme of law being launched under PART VII under the caption of “TARIFF” provided under the EA, 2003. It is significant to observe at this juncture that the proviso provided under section 61, by the legislature has considered Electricity (Supply) Act, 1948 and Electricity Regulatory Commission Act (ERCA), 1998. It would be beneficial to reproduce the said proviso and it runs as under.

The Electricity Act, 2003
PART VII
TARIFF

61. Tariff regulations -

xxx xxx xxx
xxx xxx xxx
xxx xxx xxx

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948 (54 of 1948), the Electricity Regulatory Commission Act, 1948 (14 of 1998) and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

- 12.0 In the light of aforesaid proviso provided under section 61 of the EA, 2003, it would be expedient to consider the contention raised by the complainant consumer that as provided under the “**Maharashtra Electricity Duty Act (for short MEDA), 1958**” a definition of “**Consumption Charges**” has been provided under section 2 (aa). This Forum also finds it beneficial to reproduce here under the said definition and it runs as under.

Maharashtra Electricity Duty Act, 1958

2(aa) “consumption charges” means the charges levied by the licensee, under the Electricity (Supply) Act, 1948, for the energy consumed by a consumer which charges shall include the energy charges, maximum demand charges, fuel adjustment charges and fuel cost adjustment.

- 13.0 It is therefore manifest and discernible that the “**Consumption Charges**”, envisaged under the MEDA, 1958, which has been referred by the complainant consumer as BEDA, 1958, means the charges levied by the Distribution Licensee like the present Respondent BEST Undertaking to be levied under the Electricity (Supply Act), 1948. It is needless to observe at this juncture that as provided in the *proviso* reproduced above under section 61 of EA, 2003 the same was to be continued to apply for a period of one year or until the terms and condition for tariff are specified under the said section 61, whichever is earlier. It is therefore crystal clear that the definition of “**Consumption Charges**” much relied on by the complainant consumer had a very short life i.e. of one year or until the *tariff* is decided under the said section 61 by the MERC authority, whichever is earlier.
- 14.0 In view of the aforesaid discussion, to reiterate despite the aforesaid scheme of law launched under section 61 and section 62 of the EA, 2003, the complainant did not care to go through the same and thus proceeding to abuse the process of law by dragging the matter before the IGRC and thereafter before this Forum. To conclude

on this aspect, the inclusion of “TDLR” has been duly considered, approved and sanctioned by the MERC as an integral component of “TARIFF” vide its order dtd. 16/05/2012 in case no. 171/2011 and the same has been made applicable by the Respondent BEST Undertaking from 01/06/2012.

- 15.0 At this juncture, this Forum observes that the “TDLR” being the part and parcel of the tariff, there is nothing wrong on the part of the Respondent BEST Undertaking to levy 17% ED thereupon. The Respondent BEST Undertaking has submitted before this Forum that whatever duty is collected viz. 17% as ED charged on the tariff is not retained by the Respondent BEST Undertaking but the same is required to be remitted to Govt. of Maharashtra immediately. This Forum therefore finds that the Respondent BEST Undertaking has not been a beneficiary of collecting the 17% ED on the tariff, and not committed any illegality therein.
- 16.0 This Forum, in this context proceed to observe that the reliance placed by the complainant consumer on the MEDA, 1958 has been unsustainable in law on one more aspect viz. assuming for a moment that there is a merit in the contention raised by the complainant that the consumption charges needs to be decided and determine as provided under the State Act referred to above and quoted in his complaint. However, as observed above, we find a scheme of law launched by the Central Legislation under section 61 and 62 of the EA, 2003 giving plenary statutory powers to the MERC.
- 17.0 This Forum observes that if two laws viz. State Act and Central Act operate in a same field then the provision provided under the Central act should supersede the statutory provision provided under the State Act. This Forum finds a warrant and justification to address to such law position as a futile exercise has been undertaken by the complainant consumer to content that on the reverse of the electricity bill served on him, the Respondent BEST Undertaking has mentioned that the ED raised as shown in tariff structure will be applicable as per the schedule in BEDA, 1958 GoM notification dtd 31/01/2010.
- 18.0 This Forum finds that such mention on the electricity bill will not provide any assistance to the complainant consumer as to reiterate the “tariff” determine under the BEDA, 1958 is subject to and supersede by provision provided under section 61 and 62 of the EA, 2003. Besides it, significant to note that the Respondent BEST Undertaking has made it amply clear under the head of ED rates that 17% ED is FA+VC+FAC or “as applicable”.
- 19.0 At this juncture this Forum may observe that the settle law position is that the MERC has been vested with a statutory power under the Central Act viz. EA, 2003 to determine and accord its approval and sanction to the “tariff” applicable by the Distribution Licensee like the Respondent BEST Undertaking. It is therefore the consumer cannot take a recourse to point out such mention on the electricity bill as an “estoppel” running against the Respondent BEST Undertaking, for a simple reason that such estoppel cannot run against the law.

20.0 The complainant consumer under consideration has been charged with inclusion of TDLR in the tariff and thereon levied of 17% ED from the month of June 2012. However, he has approached the IGRC by raising a grievance in Annexure 'C' dtd. 10/07/2014 and this Forum by filing his grievance in Schedule 'A' dtd. 05/09/2014. It is therefore evident *per-se* that that complainant consumer has been blissfully complacent sitting back on his grievance and has been raising the same after an expiry of two years. It is therefore highly unsustainable on the part of the complainant consumer to raise such stale grievance before this Forum especially when it has been expressly prohibited under Regulation 6.6 provided under the MERC (CGRF & EO), Regulation, 2006. This Forum finds it expedient to reproduce the same and it runs as under.

Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006

6.6 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.

21.0 Needless to observe that by virtue of this statutory provision provided in the aforesaid Regulation, the instant complaint is unsustainable in law on this ground also.

22.0 Now this Forum proceeds to consider a contention raised by the Respondent BEST Undertaking that when the complainant consumer approached IGRC as well as this Forum, he was not its "Consumer". In this context, this Forum observes that the complainant was consumer of the Respondent BEST Undertaking till 11/06/2014. The Respondent BEST Undertaking in this regard has placed its reliance on a definition of "consumer" provided under section 2(15) of the EA, 2003.

23.0 On perusing this definition, this Forum finds that as envisaged therein, "Consumer" means any person who is supplied with electricity for its own use by the Licensee. We may observe at this juncture that we are referring to only relevant portion of the definition. This Forum observes that only the consumer of Distribution Licensee can file a complaint before the IGRC and before this Forum. As observed above, the complainant has not been a consumer of the Respondent BEST Undertaking from the date 12/06/2014. As the complainant has not been a consumer as envisaged under the EA, 2003, this Forum therefore holds that the present complaint is not maintainable in law and needs to be rejected, on this ground also.

24.0 In the aforesaid reason and discussion, this Forum finds that the present complainant under consideration has been devoid of any merit and highly unsustainable in law, therefore liable to be dismissed. Accordingly we proceed to pass the following order.

ORDER

1. The complaint No. N-G(S)-235-2014 dtd. 09/09/2014 stands dismissed.
2. Copies of this order be given to both the parties.

(Shri S.M. Mohite)
Member

(Shri Sanjay S. Bansode)
Chairman / Member Licensee